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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 143.

THE MUNICIPALITY OF PONCE, APPELLANT,

vs.

THE ROMAN CATHOLIC APOSTOLIC CHURCH IN PORTO RICO.

APPEAL FROM THE SUPREME COURT OF PORTO RICO.

BRIEF FOR APPELLANT.

FREDERICK L. CORNWELL,
Attorney for Appellant.

(20,437.)

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Statement of Facts.

This is a suit brought in the Supreme Court of Porto Rico, as a *nisi prius* or trial court, by the Roman Catholic Church. The complaint or petition was filed on the twenty-fourth day of June, in the year one thousand nine hundred and four. (See Record, page 10.)

From the complaint or petition it appears somewhat difficult to determine the exact nature of the action. The suit was brought under the alleged authority of an act of the Legislative Assembly of Porto Rico, approved by the Governor of Porto Rico on the tenth day of March of the year one thousand nine hundred and four, said act taking effect forthwith; which act of the Legislative Assembly reads as follows:

"AN ACT

"TO CONFER ORIGINAL JURISDICTION ON THE SUPREME COURT OF PORTO RICO FOR THE TRIAL AND ADJUDICATION OF CERTAIN PROPERTY CLAIMED BY THE ROMAN CATHOLIC CHURCH IN PORTO RICO.

"Be it enacted by the Legislative Assembly of Porto Rico:

"SECTION 1. Original jurisdiction is hereby conferred on the Supreme Court of Porto Rico for the trial and adjudication of all questions now existing, or which may arise, between the Roman Catholic Church in Porto Rico, and the People of Porto Rico, affecting property rights, whether real or personal or mixed, claimed by either party.

"SECTION 2. The Attorney General of Porto Rico shall be authorized to accept service for the People of Porto Rico of any citation, summons or other process issued by said court in said proceedings.

"SECTION 3. The Supreme Court, for the purpose of such trial and adjudication, shall have the right to issue process for witnesses and to receive testimony, and the procedure in said court shall be the same, as near as may be, as that prescribed for the district courts of Porto Rico in civil cases, and the Supreme Court shall have full power to enter any and all orders and decrees that may be necessary to a final and full adjudication of all the claims of either party to the proceedings, and may issue all writs or process necessary to enforce the jurisdiction hereby conferred upon said court: *Provided,* That the Attorney General of Porto Rico shall at once prepare for such hearing and trial and if the said Roman Catholic Church does not commence proceedings under this act within three months after its passage and approval, then, in that event, it shall be the duty of the Attorney General to commence said proceedings in behalf of the insular government.

"SECTION 4. After the issues have been fully submitted to the said court upon the law and the facts, and after hearing the arguments of the respective parties, or their counsel, the court shall enter a final judgment and decree, fully determining the rights of either or both of the parties, and vesting the title to the subject-matter of the controversy, or any part thereof, in such party or parties, as the court may deem entitled thereto. The said court may issue any and all writs

that may be necessary to place the parties in quiet possession of the property so adjudicated to them, or either of them. But nothing in this act shall be construed to limit the right of appeal, either of the People of Porto Rico or of the Roman Catholic Church, but either party may appeal from the final judgment or decree of said court to the Supreme Court of the United States, in the manner provided by law for appeals to that court generally.

"SECTION 5. Original jurisdiction is hereby also conferred on the Supreme Court of Porto Rico for the trial and adjudication of all questions now existing, or which may arise, between the Roman Catholic Church in Porto Rico and any municipality of Porto Rico, affecting property rights, whether real or personal or mixed, claimed by either party.

"SECTION 6. The mayor of any municipality within Porto Rico wherein may be situated any property over which such questions exist, shall be authorized to accept service for the municipality of any citation, summons, or other process issued by said court in said proceedings.

"SECTION 7. For the purpose of such trial and adjudication and appeal, all the provisions of sections 3 and 4 of this act shall be deemed applicable.

"SECTION 8. This act shall take effect from and after its passage.

"Approved, March 10, 1904."

The petition or bill of complaint seems to involve two separate or distinct pieces of real property acquired in totally different manners, and, in point of time, years apart, by the municipality of Ponce, Porto Rico, and registered in the name of the municipality of Ponce, Porto Rico, in the office of the registrar of deeds for the district of Ponce, Porto Rico. According to the petition or bill of complaint, the said two pieces of property have been used for the purposes of worship by the Roman Catholic Church. The prayer of the petition or bill of complaint prays that the Roman Catholic Church in Porto Rico be declared to be the owner of the two pieces of property described in the petition or bill of complaint without any reservation or limitation, and that the inscription in favor of the municipality of Ponce, Porto Rico, in the

office of the registrar of the district of Ponce be annulled and canceled. The petition or bill of complaint recites (Record, page 1):

"These temples or churches were built with funds of the municipality within which they were situated, and since then they have been maintained by donations and alms from the parishioners."

The petition or bill of complaint further states (Record, page 4):

"As is seen, the city council (meaning the council of the municipality of Ponce, Porto Rico), if it intervened in the repairing of the Church of Ponce, it has been as an auxiliary to the visiting board, or, at most, as creditor."

The petition or bill of complaint further states (Record, page 5):

"The City Council of Ponce has included in the inventory of its property the parochial church described in the first allegation of the complaint, on the ground that from time immemorial the said church has been included in that inventory."

The petition or bill of complaint states (Record, page 6):

"After the change of sovereignty, the City Council of Ponce attempted to record in the registry of property the possession of the said church and the lot upon which it is situated," and that inscription was refused unless a decision could be obtained from the Secretary of Justice of Porto Rico to authorize the same.

The petition further states that the Secretary of Justice of Porto Rico decided in favor of the Municipality of Ponce, Porto Rico (the petition alleges that the Secretary of Justice decided wrongly), and that the property was duly inscribed in the registry of property.

The second part of the petition or bill of complaint, entitled "Legal Points," is not and does not pretend to be a

statement of facts, but is merely an argument or brief and cannot be considered as a part of the pleadings in this case.

The Code of Civil Procedure now in force and effect in Porto Rico was enacted by the Legislative Assembly of Porto Rico on the tenth day of March of the year one thousand nine hundred and four, and took effect on the first day of July of the same year. The petition or bill of complaint was filed with the clerk of the Supreme Court of Porto Rico in the month of June, one thousand nine hundred and four, but there was no service of process on the defendant in this case until after the first day of July of the year one thousand nine hundred and four, and when the present Code of Civil Procedure was in full force and effect in Porto Rico.

The defendant filed a demurrer generally to said petition or bill of complaint and eleven grounds of special demurrer, which demurrer was orally argued and brief filed at same time in support of same (Record, page 18). The said general and special demurrers were overruled by the Supreme Court of Porto Rico without handing down any opinion stating the reasons, and the defendant refused to plead further (Record, page 21). Default was taken by the plaintiff, and final judgment was entered by the court in favor of the plaintiff and against the defendant on the twenty-first day of May of the year one thousand nine hundred and six. No testimony was taken by the court to support plaintiff's petition or bill of complaint. From the final judgment or decree of the Supreme Court of Porto Rico this appeal was taken.

ARGUMENT.

ASSIGNMENT OF ERRORS.

First. That the Supreme Court was without jurisdiction of the subject-matter in controversy.

According to the general laws in force and effect at the time of the commencement of this suit, the Supreme Court of Porto Rico was without original jurisdiction of this case, except as the Legislative Assembly of Porto Rico had attempted to confer jurisdiction on said court by enactment of the heretofore-quoted special statute, passed on the tenth day of March of the year one thousand nine hundred and four.

The act of the Legislative Assembly of Porto Rico approved on the tenth day of March of the year one thousand nine hundred and four, conferring original jurisdiction on the Supreme Court of Porto Rico, is absolutely void, the same being contrary to the Fourteenth Amendment of the Constitution of the United States. However, apart from the Fourteenth Amendment of the Constitution of the United States, this act of the Legislative Assembly of Porto Rico is unconstitutional and void, and the question of the enactment of such a statute is not new in the constitutional history of England or the United States, such as the guarantee of the Magna Charta, which said, "Justice without purchase," and the following provisions of the Bill of Rights, which said:

First. "That the pretended power of suspension of laws, or the execution of laws, by regal authority, without the consent of Parliament, is illegal."

Second. "That the pretended power of suspending of laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of late, is illegal."

Third. "That the commission for erecting the late court of commissioners for ecclesiastical causes, and all other commissions and courts of like nature, are illegal and pernicious."

In Davidson *vs.* New Orleans, 96 U. S., page 101, the court say:

"The prohibition against depriving the citizen of his life, liberty, or property without due process of laws is not new in the constitutional history of the English race. It is not new in the constitutional history of this country, and it was not new in the Constitution of the United States, when it became part of the Fourteenth Amendment, in the year 1866."

In Weimar *vs.* Bunbury, 30 Michigan, 214, Cooley, J., delivering the opinion, said:

"The truth is, the Bills of Rights in the American constitutions have not been drafted for the introduction of new law, but to secure old principles against abrogation or violation. They are conservatory instruments rather than reformatory; and they assume that the existing principles of the common law are ample for the protection of individual rights, when once incorporated in the fundamental law and secured against violation."

In Robertson *vs.* Baldwin, 165 U. S., page 281, the court, per Brown, J., said:

"The law is perfectly well settled that the first ten amendments to the Constitution, commonly known as the Bill of Rights, were not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which we had inherited from our English ancestors, and which had from time immemorial been subject to certain well-recognized exceptions arising from the necessities of the case. In incorporating these principles into the fundamental law, there was no intention of disregarding the exceptions, which continued to be recognized as if they had been formally expressed."

One of the earliest cases that the writer has been able to discover in American decisions is Moses Holden *vs.* James, 11 Mass., page 396, wherein the court holds that the legislature have no authority under the Constitution to suspend the operation of a general law in favor of an individual.

One of the leading cases, that is often cited and quoted, is Wally's Heirs *vs.* Kennedy, 2 Yerg. (Tenn.), 554. The court says:

"The rights of every individual must stand or fall by the same rule or law that governs every member of the body politic or land under similar circumstances; and every partial or private statute, of which the direct purposes are to destroy or affect individual rights, or does the same thing by offering remedies leading to similar circumstances, is unconstitutional and void. Were it otherwise, odious individuals and corporations will be governed by one law; the mass of the community and those who made the law by another; whereas the like general law affecting the whole community could not have been passed."

In Guy and others *vs.* Hermance and others, 5 Cal., page 73, the court says:

"The legislature cannot exercise judicial functions; therefore cannot except one case, or one party, from the operation of a general rule of law, either as to right or remedy."

The next proposition to be discussed under the first assignment of error is the power of the Legislative Assembly of Porto Rico to enact a partial or private or special law, same being contrary to the organic act establishing a civil government in Porto Rico and contrary to the acts of Congress applicable to all Territories, said acts of Congress being the paramount law. According to our contention, the act of the Legislative Assembly of Porto Rico, attempting to confer original jurisdiction on the Supreme Court of Porto Rico for the trial and adjudication of certain property claimed by the Roman Catholic Church in Porto Rico, is a private, or partial, or special act and is contrary to the

organic act of Congress creating a civil government in Porto Rico and contrary to the general statutes of the United States having force and effect in Porto Rico.

The organic act creating civil government in Porto Rico (31 Stat. at Large, 77), approved April 12, 1900, section 14, states:

"That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except that the internal-revenue laws, which, in view of the provisions of section 3, shall not have force and effect in Porto Rico."

In view of section 14 of the organic act hereinbefore quoted, we submit that the act of Congress of July 30, 1886 (24 Stat. at Large, page 170), is in force and the title and section 1 read as follows:

"AN ACT TO PROHIBIT THE PASSAGE OF LOCAL OR SPECIAL LAWS IN THE TERRITORIES OF THE UNITED STATES, TO LIMIT THE TERRITORIAL INDEBTEDNESS, AND FOR OTHER PURPOSES.

"Be it enacted," etc., "That the legislatures of the Territories of the United States now or hereafter to be organized shall not pass local or special laws in any of the following enumerated cases, that is to say:

"Granting divorces.

"Changing the names of persons or places.

"Laying out, opening, altering, and working roads or highways.

"Vacating roads, town plats, streets, alleys, and public grounds.

"Locating or changing county seats.

"Regulating county and township affairs.

"Regulating the practice in courts of justice.

"Regulating the jurisdiction and duties of justices of the peace, police magistrates, and constables.

"Providing for changes of venue in civil and criminal cases.

"Incorporating cities, towns or villages, or changing or amending the charter of any town, city, or village.

"For the punishment of crimes or misdemeanors.

"For the assessment and collection of taxes for territorial, county, township, or road purposes.

"Summoning and impaneling grand or petit jurors.

"Providing for the management of common schools.

"Regulating the rate of interest on money.

"The opening and conducting of any election, or designating the place of voting.

"The sale or mortgage of real estate belonging to minors or others under disability.

"The protection of game or fish.

"Chartering or licensing ferries or toll bridges.

"Remitting fines, penalties, or forfeitures.

"Creating, increasing, or decreasing fees, percentage, or allowances of public officers during the term for which said officers are elected or appointed.

"Changing the law of descent.

"Granting to any corporation, association, or individual the right to lay down railroad tracks, or amending existing charters for such purpose.

"Granting to any corporation, association, or individual any special or exclusive privilege, immunity, or franchise whatever.

"In all other cases where a general law can be made applicable, no special law shall be enacted in any of the Territories of the United States by the territorial legislatures thereof."

Section 7 of the same act:

"That all acts and parts of acts hereafter passed by any territorial legislature in conflict with the provisions of this act shall be null and void."

The special attention of the court is called to the following subjects treated of in section 1 of said act:

"Regulating the practice in courts of justice. Granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever. In all other cases where a general law can be made applicable, no special law shall be enacted in any of the Territories of the United States, by the territorial legislatures thereof."

It therefore seems clear that the Supreme Court of Porto Rico had no power or authority to assume jurisdiction of this case, as the passage of such an act as the one in question is specifically prohibited by the paramount law in force and effect in Porto Rico—that is to say, the laws of the national Congress of the United States not locally inapplicable.

The act of Congress of July 30, 1886 (24 Stat. at L., page 170), section 4, which is a similar prohibition to the ones quoted above, is fully discussed in Martin *vs.* Territory, 8 Okla., page 41. Pac. Rep., vol. 48, page 106, the court say:

"If the proposition involved was a new proposition, that had not received repeated careful consideration by this court, or been elucidated by authorities, we would yet have no difficulty, from the plain language of the statute of 1886, to determine the meaning and intent of Congress and the exact limitation intended to be imposed thereby upon the powers of those intrusted with the creation of municipal indebtedness, or whether the legislature of the Territory, as well as the governing authorities of the corporation, were inhibited from creating an indebtedness in excess of the limit prescribed by that law. The language of the act is not that no political or municipal corporation, etc., shall create indebtedness which shall in the aggregate, exceed the limit, but its language is 'that no political or municipal corporation, county or other subdivision in any of the Territories of the United States shall ever become indebted in any manner' in the aggregate exceeding such limit. It may be assumed that Congress in thus legislating had in contemplation the existence of conditions requiring congressional action for the correction of an existing evil; that the evil existed in the unrestrained power of accumulating and creating municipal indebtedness beyond the ability and resources of the municipalities to make payment; that it intended to restrain such power, and to put a fixed limit to the indebtedness that might be a charge upon the property of the citizens of any municipality within the Territories. Such being the spirit and the purpose of the act, it may also be assumed that Congress had the wisdom to use, and did use, in the enactment, language that could only be construed as effective of such intent and purpose. It will not, therefore, be as-

sumed (the language of the act not warranting such assumption, but clearly negativing the same) that Congress simply intended limiting the powers of the governing body of the corporation in this behalf, and yet left the authority existing in the legislature to impose liabilities to an unlimited extent, and thus defeat the very spirit and purpose of the enactment. If the legislature may lawfully provide for the increasing of the indebtedness of a municipality beyond the 4 per cent. limit, and to any extent, then the spirit of the law can be evaded, and a prohibition on the governing body of the corporation alone would be nugatory to meet the condition and remedy the evil which was the object of the enactment; and when Congress provided that such corporation should not 'become indebted in any manner' in excess of the limit provided, it means just what the language imports—that not in any manner, whether by corporate or by legislative action, should such indebtedness be extended beyond the limit. We entertain no doubt that if, when the warrants in question were issued, the indebtedness of the city of Guthrie was in excess of the 4 per cent. of the value of the taxable property within said city, as shown by the last assessment thereof for territorial and county taxes, chapter 14 of the Statutes of 1890 was invalid to make warrants valid as a legal indebtedness against said city, or to authorize enforcement of the payment thereof by the levy of a special tax upon the property of the citizens of said city.

"Counsel for the relator contend that the warrants sought to be collected in this proceeding were issued in payment of the judgment rendered upon a settlement and compromise of more than ten thousand dollars in claims against these various municipalities (provisional governments). That judgment stands unreversed and unsatisfied, and we contend that the settlement of claims ascertained in good faith, the validity of which has been doubted, constitutes a valid compromise, which will not be disturbed in the absence of fraud, undue advantage, or mistake.

"We concede the soundness of this proposition as an abstract proposition of law, but it has no application to the questions involved in the case at bar. That rule only applies where the judgment is rendered by a court of competent jurisdiction, in a cause wherein it has jurisdiction to render the judgment, the validity of which is thus asserted. But where a court renders a judgment in accordance with a

statute to create obligations, the creation of which is prohibited by paramount law, the judgment of the court has no more validity than the invalid statute it seeks to enforce. And this whether such judgment be by compromise and agreement of the parties to the record or otherwise. The want of authority to make the indebtedness for which these warrants were issued a legal indebtedness against the city of Guthrie extended to a want of authority in the court to declare such indebtedness valid, and the mayor and common council were not authorized, by consenting thereto, to confer authority on the court to declare such indebtedness valid or to make the warrants valid."

We further contend under the first assignment of error that the Legislative Assembly of Porto Rico exceeded its power and legislative authority when it attempted to alter, change, amend, or augment the jurisdiction of the Supreme Court of Porto Rico, and that the Supreme Court of Porto Rico was absolutely without the power and authority to hear and adjudicate this case as a *nisi prius* or trial court, and all the proceedings had by the Supreme Court in this case are absolutely null and void.

Under this contention of ours it becomes necessary to construe section 33 of the organic act establishing civil government in Porto Rico, which section reads as follows (31 Stat. at L., 77):

"That the judicial power shall be vested in the courts and tribunals of Porto Rico as already established and now in operation, including municipal courts, under and by virtue of general orders, numbered one hundred and eighteen, as promulgated by Brigadier General Davis, United States volunteers, August sixteenth, eighteen hundred and ninety-nine, and including also the police courts established by general orders, numbered one hundred and ninety-five, promulgated November twenty-ninth, eighteen hundred and ninety-nine, by Brigadier General Davis, United States volunteers, and the laws and ordinances of Porto Rico, and the municipalities thereof, in force, so far as the same are not in conflict herewith, all of which courts and tribunals are hereby continued. The jurisdiction of said courts and

the form of procedure in them, and the various officials and attachés thereof, respectively, shall be the same as defined and prescribed in and by said laws and ordinances, and said general orders numbered one hundred and eighteen and one hundred and ninety-five, until otherwise provided by law: *Provided, however,* That the Chief Justice and the associate justices of the Supreme Court and the marshal thereof shall be appointed by the President, by and with the advice and consent of the Senate, and the judges of the district courts shall be appointed by the Governor, by and with the advice and consent of the Executive Council, and other officials and attachés of all the other courts shall be chosen as may be directed by the Legislative Assembly, which shall have authority to legislate from time to time as it may see fit with respect to said courts, and any others they may deem it advisable to establish, their organization, the number of judges and officials and attachés for each, their jurisdiction, their procedure and all other matters affecting them."

Section 33 of the organic act, heretofore quoted, provides that the judicial power shall be vested in the courts as already established and in operation at the time of the passage of the organic act. The section states that the jurisdiction of the said courts and the form of procedure in them, etc., shall be the same as defined and prescribed in and by said laws and ordinances and general orders number 118 and 195, until otherwise provided by law. The section then states the manner of appointing the officials of the Supreme and district courts, and then provides that all other officials and attachés of all other courts shall be chosen as may be directed by the Legislative Assembly, which shall have authority to legislate from time to time as it may see fit with respect to said courts, and any others they may deem advisable to establish, their organization, the number of judges and officials, and attachés for each, their jurisdiction, their procedure, and all other matters affecting them.

Under section 33 of the organic act the one power that is authorized to change the jurisdiction of the Supreme Court of Porto Rico is the Congress of the United States. A care-

ful reading of section 33 clearly shows that the authority of the Legislative Assembly of Porto Rico is specifically limited to all other courts established or that may be established in Porto Rico, and that the said section 33 grants no authority to the Legislative Assembly of Porto Rico to change, modify, or extend the jurisdiction of the Supreme Court of Porto Rico.

Our contention is that the National Congress of the United States retained the exclusive right to legislate in regard to the Supreme Court of Porto Rico, also the district courts, and granted unto the Legislative Assembly of Porto Rico the right to legislate in regard to all other courts, subject to the limitation put upon all the acts of the Legislative Assembly of Porto Rico. If the Legislative Assembly of Porto Rico can extend or modify the jurisdiction of the Supreme Court, why, then they can abolish the court altogether, although the judges and marshal are selected and appointed by the President of the United States with the advice and consent of the Senate. Such results cannot have been within the intention of Congress, nor does the language so imply. The failure of the Supreme Court of Porto Rico to hand down a written opinion giving their reasons for sustaining jurisdiction in this case makes it impossible for the writer to show the reasoning of the Supreme Court in sustaining their jurisdiction.

This court, however, took an entirely different view of a similar provision in the organic act of the Territory of Utah, which came before it for construction and decision in the case of Perris *vs.* Higley *et al.*, 20 Wallace, 375. This was a case involving the determination of the jurisdiction of probate courts as determined by an act of the Legislative Assembly of the Territory of Utah, and the question was whether such act was inconsistent with the provisions of the organic act creating a territorial government in Utah. The organic act of Utah provided that the power of the territorial legislature should "extend to all rightful subjects of

legislation consistent with the Constitution of the United States and with that act"—a much broader grant of legislative power than the Legislative Assembly of Porto Rico has. The judicial system created by the organic act of the Territory of Utah is as follows:

"The judicial power of the Territory shall be vested in a Supreme Court, district courts, probate courts, and justices of the peace" (prescribing the organization and number of the district courts and the manner of appointment of the judges).

"The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts, and of the justices of the peace, shall be as limited by law: *Provided*, that justices of the peace shall have no jurisdiction of any matter in controversy where the title and boundary of lands may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars, and the said Supreme and district courts respectively shall possess chancery as well as common-law jurisdiction."

Notwithstanding these plain provisions in the organic act of the Territory of Utah, the territorial legislature attempted to exercise its supposed authority to "limit by law" the jurisdiction of the probate courts, which it did by giving them general common-law and chancery jurisdiction, thus making them in all respects coördinate with the district courts, and it was the validity of this act which was in question. This court, per Mr. Justice Miller, said:

"Looking, then, to the purpose of the organic act to establish a general system of government, and its obvious purpose to say what courts shall exist in the Territory, and how the judicial power shall be distributed among them, and specially to the fact that all ordinary and necessary jurisdiction is provided for in the Supreme and district courts, and that of the justices of the peace, and that the jurisdiction of the probate courts is left to rest on the general nature and character of such courts as they are recognized in our system of jurisprudence, is it not a fair inference that it was not intended that that court should be made one of general juris-

diction—that it should not be converted into a court in which all rights, whether civil or criminal, whether of common law or chancery cognizance, whether involving life, or liberty, or property, should be lawfully tried and determined?"

Justice Miller then proceeded to explain the meaning of the phrase "as limited by law" in the following language:

"It is supposed that a sufficient answer to this course of reasoning is found in the declaration of the 9th section of the organic act already cited, that the jurisdiction of the several courts therein provided for, 'shall be as limited by law.' The argument is that this refers to laws to be made thereafter by the territorial legislature, and that as the power of that body extended to all rightful subjects of legislation, it extended to this of totally changing the jurisdiction of these courts. We are not prepared to say that, in deciding what law is meant in this phrase, 'as limited by law,' we are wholly to exclude laws made by the legislature of the Territory. There may be cases when that legislature conferring new rights, or new remedies, or establishing anomalous rules of procedure within their legislative power, may direct in what court they shall be had. Nor are we called upon to deny that the functions and powers of the probate court may be more specifically defined by territorial statutes within the limit of the general idea of the nature of probate courts, or that certain duties not strictly of that character may be imposed on them by that legislation."

Justice Miller then proceeds to state what the power of the territorial legislature of Utah is:

"We hold that the acts of the legislature are not the only law to which we must look for the powers of any of these territorial courts. The general history of our jurisprudence and the organic act itself are also to be considered, and any act of the territorial legislature inconsistent with the latter must be held void. We are of the opinion that the one we have been considering is inconsistent with the general scope and spirit of that act in defining the courts of the Territory, and in the distribution of judicial power amongst them, inconsistent with the nature and purposes of a probate court

as authorized by that act, and inconsistent with the clause which confers on the Supreme Court and district courts general jurisdiction in chancery as well as at common law. The fact that the judges of these latter courts are appointed by the Federal power, paid by that power—that other officers of these courts are appointed and paid in like manner—strongly repels the idea that Congress, in conferring on these courts all the powers of courts of general jurisdiction, both civil and criminal, intended to leave to the territorial legislature the power to practically evade or obstruct the exercise of those powers by conferring precisely the same jurisdiction on courts created and appointed by the Territory.

"The act of the territorial legislature conferring general jurisdiction in chancery and at law on the probate courts is, therefore, void."

It therefore seems clear that the Supreme Court of Porto Rico erroneously construed the meaning of section 33 of the organic act creating civil government in Porto Rico

The construction of a similar statute to the one in question is fully discussed in Territory *vs.* Ortiz, 1 New Mexico, page 5. The court said:

"The organic law passed by Congress vests in the Supreme Court of this Territory full appellate jurisdiction, but does not give it original jurisdiction in any case but that of granting writs of *habeas corpus*.

"It has been repeatedly decided in courts of the highest authority that an affirmative grant of original jurisdiction implies a negative upon its exercise in any other case. By the Constitution of the United States the original jurisdiction of the Supreme Court of the United States is limited to cases affecting ambassadors, and other public ministers and consuls, and those in which a State may be a party. Under this affirmative grant of original jurisdiction the Supreme Court of the United States decided that Congress had no power to extend it. (See Marbury *vs.* Madison, 1 Cranch, 137; Cohens *vs.* The State of Virginia, 6 Wheat., 264; Osborn *et al. vs.* The Bank of the United States, 9 Wheat., 738.) Adhering to the principles thus laid down in those adjudications of the Supreme Court of the United States, the conclusion is manifest that the Legislative Assembly, by its laws, cannot extend the affirmative grant of original

jurisdiction to the Supreme Court of the Territory beyond the limits of organic law of Congress approved September 9, 1850. Hence the third section of article 4 of the organic law of September 22, 1846, published in the Kearney Code, is not considered in force, and cannot enlarge the original jurisdiction of this court beyond the limits of the organic law of Congress. If the case now under consideration was a case in which the issuing the writ of mandamus was necessary to the exercise of the appellate jurisdiction of this court, the opinion of the court would be quite different."

The next question that we wish to call the court's attention to under the first assignment of error is that the act of the Legislative Assembly of Porto Rico is an attempt to create a special court for the trial of the rights and obligations of particular parties.

Cooley on Constitutional Limitations (third edition), page 392:

"Special courts cannot be created for the trial of the rights and obligations of particular parties; and those cases in which legislative acts granting new trials or other special relief in judicial proceedings, while they have been regarded as usurpations of judicial authority, have also been considered obnoxious to the objection that they undertook to suspend the general laws in special cases."

See also *Bank of State vs. Cooper*, 2 Yerg. (Tenn.), 599.

We therefore submit that under the first assignment of error the Supreme Court of Porto Rico was without jurisdiction to hear and adjudicate this case as a *nisi prius* or trial court.

That the statute in question is a special one and attempts to suspend the general laws in force in Porto Rico.

That the statute in question bestows favor on the Roman Catholic Church.

That the statute in question is class legislation.

That the statute in question arbitrarily deprives the Municipality of Ponce of having its case tried and ad-

judicated under and according to the general laws in force in Porto Rico.

That the statute in question confers special privileges on the Roman Catholic Church.

That this statute deprives the Municipality of Ponce, Porto Rico, of "due process of law" and "equal protection of the laws."

SECOND ASSIGNMENT OF ERROR.

That Said Court Was Without Jurisdiction of the Parties.

Our contention is that the Roman Catholic Church in Porto Rico has not the legal capacity to sue, for the reason that it is not a judicial person, nor a legal entity, and is without legal incorporation. An examination of the petition or bill of complaint in this action shows that it is a suit by the Roman Catholic Church in Porto Rico, and the complaint or petition evidently attempts to show that the Roman Catholic Church in Porto Rico is some kind of association or corporation. The question resolves itself into two propositions:

First. Whether or not the Roman Catholic Church, the plaintiff in this case, is a natural person.

Second. Whether or not the Roman Catholic Church in Porto Rico is a corporation or association, and, if so, has it complied with the laws so as to enable it to sue and be sued in the courts of Porto Rico?

The first proposition needs no argument in support thereof, as it cannot be contended that the Roman Catholic Church in Porto Rico is a natural person.

The second proposition raises the question whether the Roman Catholic Church is a corporation or association within the meaning of the laws of Porto Rico. If it is a corporation or association, we submit to the court that it is

necessary for the Roman Catholic Church to specifically allege its incorporation, where incorporated, and by virtue of what authority or law it was incorporated, and, if a foreign corporation, show that it has filed its articles of incorporation or association in the proper office of the government, in accordance with the laws of Porto Rico. It is presumed that the Roman Catholic Church will not attempt to show that it was incorporated in accordance with the laws of Porto Rico relating to corporations, or that it has ever filed any articles as a foreign corporation in order to do business in the Island of Porto Rico, or that it has taken any steps whatever, by legislative action, to be recognized as a judicial person, in order that it may sue and be sued in the courts of Porto Rico.

It is a matter of general knowledge that some nations recognize the Roman Catholic Church as a sovereignty; other nations as an ecclesiastical institution under the patronage of the State, with peculiar rights and privileges. It is also equally well known that the United States has never recognized it in either way, and that any such recognition would be unconstitutional, and that when acquiring property in the United States it has been necessary to comply with the law in the same form and manner as other religious or charitable organizations.

It may be contended with great force by counsel for the Roman Catholic Church that the treaty of peace and the act of the Legislative Assembly of Porto Rico conferring jurisdiction on the Supreme Court of Porto Rico recognize the Roman Catholic Church as a judicial person; but a careful examination of the treaty of peace and the said act will show that there is nothing in either the treaty of peace or the act which could be construed, even by implication, as a recognition of the Roman Catholic Church as a judicial person. Paragraph 2 of article 8 of the treaty of peace, striking out all parts immaterial to this suit, states:

"And it is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers cannot in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds of ecclesiastical or civic bodies, or any other association having legal capacity to acquire and possess property in the aforesaid Territories."

The language of the treaty only admits of one construction, to wit: That any ecclesiastical body in Porto Rico may have and possess property in Porto Rico, provided it complies with the law. This gives no special privilege and is only declaratory of the general law.

The statute in question shows clearly that its purpose is to give the Supreme Court of Porto Rico jurisdiction to hear and determine the rights of both parties, and one of the rights in question is whether or not the Roman Catholic Church has legal capacity to sue in Porto Rico.

It is an elementary question, laid down by this court, that a foreign corporation or association is not a person within the meaning of the Fourteenth Amendment of the United States Constitution, in that a State may impose any condition that it deems fit and proper upon any corporation or association as a condition of their admission within its limits.

Pembina Consolidated Silver Mining Co. vs. Pennsylvania, 125 U. S., 181.

Norfolk & W. Ry. Co. vs. Pennsylvania, 136 U. S., 114.

W. U. Tel. Co. vs. Fremont, 39 Neb., 707.

The laws of Porto Rico have specifically laid down and stated what a foreign corporation must do in order to do business in Porto Rico. The statute is mandatory in its character, and unless the Roman Catholic Church has complied with same, they had no right or standing in the Supreme Court of Porto Rico. It is a well-recognized and elementary principle of law that, in order that a corporation

its face whether or not the same is a corporation and under and by virtue of what laws it is incorporated; and if the complaint does not so state, it is demurrable. Therefore we submit to this court that the petition shows upon its face that the Roman Catholic Church of Porto Rico is not a natural person; and we further submit that the complaint wholly fails to show that it is a legally incorporated association of any kind or class whatsoever. We further submit that the petition fails to show under and by virtue of what authority or law said association or corporation exists. We further submit that if same is a foreign corporation or association, the petition wholly fails to show that it has complied with the laws of Porto Rico, so that it can do business within Porto Rico.

THIRD ASSIGNMENT OF ERROR.

That said court erred in overruling the general demurrer and the eleven special grounds of demurrer interposed by the defendant to the complaint filed in said cause.

GENERAL DEMURRER.

That the Roman Catholic Church does not state facts sufficient to constitute any cause of action, and that it admits that the property in question was constructed out of funds of the Municipality of Ponce, Porto Rico, and the legal title now rests in the Municipality of Ponce, Porto Rico. The second subdivision of the second paragraph of the bill of complaint states that the temples or churches were built with funds of the Municipality of Ponce. The 14th and 15th paragraphs of the bill of complaint state that said temples and churches are registered in the name of the Municipality of Ponce, Porto Rico. In order to recover in this suit, we

submit to the court that the Roman Catholic Church must have legal and beneficial title to the aforesaid churches, as it is a general rule that the plaintiff in an action to recover real property must rely upon the strength of his own title and not on the weakness of his adversary. And we further contend that no principle of law is more firmly established than that in order for a plaintiff to recover, he must allege and prove a superior title to the property sued for.

Therefore we submit to the court that the Roman Catholic Church, in stating that the churches were built with funds of the Municipality of Ponce, and that the legal title was inscribed in the name of the Municipality of Ponce, defeats its action.

The first and second grounds of demurrer have heretofore been discussed under the first and second assignments of error.

The third ground of demurrer states:

"That there is a misjoinder of causes of action, in that there are two separate and distinct causes of action."

An examination of the bill of complaint in this cause shows clearly that the Roman Catholic Church is suing to recover two separate and distinct pieces of real property located in the Municipality of Ponce, Porto Rico. One of the causes of action refers to a controversy which arose between 1827 and 1845. The second cause of action arose about another separate and distinct property, in the years 1874 and 1880. They are two entirely separate and distinct controversies, according to the bill of complaint. The plaintiff and defendant are the same in each suit.

An examination of the Code of Civil Procedure of Porto Rico shows that it authorizes the uniting of several causes of action in the same complaint where they all arise out of claims to recover specific real property, with or without damages for the withholding thereof, or for waste committed thereon, and for the rents and profits of same. In

other words, the statute allows different causes of action, whether legal or equitable, to be united in the same petition, provided they refer to a specific piece or parcel of land. For example, they may sue for possession and at the same time ask an injunction to restrain waste.

However, this statute does not authorize the uniting in one suit or petition for the recovery of two separate and distinct pieces of real property where the different causes of action arose at different times, based on different and distinct facts, and are separate and distinct controversies. The State of Missouri has a similar statute to the one under discussion (*In re* Paddock *vs.* Somes, Mo. Supreme Court 10 L. R. A., 254). The statute is discussed and the court holds that the statute allows only of the uniting of several legal or equitable causes of action when they refer to one and the same piece of property.

Therefore we submit to the court that there is a misjoinder of causes of action.

The fourth ground of demurrer has heretofore been argued.

The fifth ground of demurrer states:

"That the petition or declaration shows upon its face that it is not an ordinary and concise statement of the facts, with a prayer for relief, and that the same is wholly or in part unintelligible, and there are divers blank spaces left in each and every count of said declaration; there are divers omissions of material statements and averments, and that the said declaration or petition is drawn in an untechnical manner."

We submit to the court that this ground of demurrer is not substantial, but special and to the form of the declaration; that an examination of the complaint in this suit shows that the declaration is brought in such a way that it does not comply with the Code of Civil Procedure of

Porto Rico, and that the said demurrer should be sustained upon the fifth ground.

The sixth ground of demurrer states:

"That the petition or declaration shows upon its face that the alleged causes of action are each and every one barred by the statute of limitations."

Under this ground of demurrer we submit that said action was not commenced within three months, as required by the act of the Legislative Assembly giving this Court special jurisdiction of this cause. The record in this case shows that service was made on the Municipality of Ponce on the 18th day of August, A. D. 1904, same being long after the time to commence said action had expired. It may be argued by the Roman Catholic Church that said petition was filed with the clerk of the Supreme Court of Porto Rico before the expiration of the three months allowed by the statute for the filing of same; but an examination of the statute shows that the suit must be actually commenced in three months, or the municipality would then have the right to commence said suit. Therefore we respectfully submit to this court that the causes of action in this complaint are barred by reason of the Roman Catholic Church not commencing said suit and issuing and serving summons on the Municipality of Ponce before the expiration of said three months.

We submit to the court the seventh, eighth, ninth, tenth, and eleventh grounds of demurrer together for the reason that they are special and to the form of the bill only. The tenth and eleventh grounds might possibly be considered to the substance of the bill, but any part which is substantial is covered by the grounds of demurrer heretofore discussed. We do not think it necessary to submit to the court any arguments in support of these grounds of demurrer, as an examination of the pleadings shows plainly that they are improperly drawn and should be reformed.

FIFTH AND SIXTH ASSIGNMENTS OF ERROR.

The fifth and sixth assignments of error will be considered together, because they both refer to the right of the Supreme Court of Porto Rico to enter final judgment in favor of the Roman Catholic Church without hearing testimony in this case.

We respectfully submit that the Supreme Court of Porto Rico had no power or authority to enter said judgment against the Municipality of Ponce, Porto Rico, and in favor of the Roman Catholic Church in Porto Rico, for the reason that section 194 of the Code of Civil Procedure in force in Porto Rico requires testimony to be taken in cases of this nature, and for the further reason that they are required to hear testimony under section 4 of the special act of the Legislative Assembly heretofore quoted.

We therefore submit, in view of the various errors urged upon your consideration and of all the facts appearing upon the record now before you, that the judgment of the Supreme Court of Porto Rico be reversed.

Respectfully submitted,

F. L. CORNWELL.
Attorney for Appellant.

Supreme Court of the United States,

OCTOBER TERM, 1907.

No. 143.

Office Supreme Court, U.
JAN 20 1908
JAMES H. McKENNEY
Clerk

THE MUNICIPALITY OF PONCE,

Appellant,

vs.

THE ROMAN CATHOLIC APOSTOLIC CHURCH IN PORTO RICO.

BRIEF FOR APPELLEE.

PAUL FULLER,
FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
Of Counsel for Appellee,
2 Rector Street,
New York City, N. Y.

B. H. TYRREL, PRINTER, 206-208 FULTON STREET, NEW YORK.

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Supreme Court of the United States,

OCTOBER TERM, 1907.

THE MUNICIPALITY OF PONCE, Appellant, *vs.* THE ROMAN CATHOLIC APOSTOLIC CHURCH IN PORTO RICO.	No. 143.

BRIEF FOR THE APPELLEE.

Statement.

This is an appeal from a judgment of the Supreme Court of Porto Rico, rendered May 21st, 1906 (Rec., fols. 23-24). The Supreme Court had original jurisdiction of the case under an Act of the Legislative Assembly of 1904 conferring such jurisdiction on that court in controversies between the Roman Catholic Church and the People or Municipalities of Porto Rico.

The object of the suit was to remove a cloud from and quiet the title of the plaintiff to certain church edifices, one of them in the City of Ponce and the other in the Playa or Port of Ponce.

Judgment in such suit having been given in favor of the plaintiff, the Roman Catholic Church,

the Municipality of Ponce has taken its appeal to this court. No opinion was written by the Supreme Court of Porto Rico.

Facts.

This suit or proceeding was begun by the Roman Catholic Church against the Municipality of Ponce, the second town in size and importance in the Island. The complaint of the Church set forth fully the facts by reason of which relief is demanded. A demurrer was interposed by the Municipality which was overruled and the Court granted leave to the defendant to file an answer; this the defendant having failed to do judgment was entered against it for the relief demanded.

The facts are therefore all contained in the complaint and are undisputed. Moreover, they are matters of historic record which are indisputable, at least in all essential particulars.

The importance of the litigation may be seen from the fact that as there are in Porto Rico numerous churches, built under practically the same conditions as the two here in question, a reversal of this judgment would disturb the possession of many church edifices, built during a period extending far back into the past, which have always been in the undisputed possession and absolute control of the Roman Catholic Church, and in which its worship has always been and still is carried on.

While the difficulty of finding precise English equivalents for the Spanish legal phrases must be borne in mind in reading the petition, its essential allegations appear with sufficient precision to raise the legal questions necessary to be here determined.

It appears that the Roman Catholic Church has for many years been in the lawful and peaceful possession of the two churches or temples in Ponce, dedicated, consecrated to and always used by the Catholic Church for its worship. These churches are described by certain metes and bounds from which it appears that they are edifices of a very large and substantial character.

The most important allegation of the petition is that:

> "These temples or churches were built with the funds of the municipality within which they are situated, and since then they have been maintained by donations and alms from the parishioners; and with respect to them their possession by the Catholic Church runs for many years, coming [counting] from the time when the building of the same was completed" (Rec., pp. 1-2, fol. 2).

It further appears that in 1827 by reason of steps taken by the Royal Alcalde of Ponce and by the then Governor of the Island, Don Simon de la Torre, a board or commission having jurisdiction over the repairing and conservation of churches advised the Governor that it was

> "in keeping with the decorum of a rich and Christian city like Ponce, to have a temple which would show that such conditions existed, covered with an arched roof, and not a roof of 'teja-mani,' [thatch] etc." (Rec., p. 2, fol. 3).

The petition describes with considerable minuteness of detail the various steps taken to rebuild or repair this church at Ponce. The work, although initiated in 1827, seems to have been performed at

long intervals of time, the last estimate for repairs being made in 1872.

It is evident that the sums expended came from several distinct sources—

(1) funds voluntarily contributed by the parishioners (Rec., fol. 4);

(2) the funds of the "House of the King" (fols. 5, 6);

(3) an assessment made in 1835-6 (fols. 5, 6);

(4) monies advanced by the Municipality (fol. 7).

As to the church at Playa, it was erected in part, at least, with funds donated by the parishioners and apparently on private land (fols. 8, 9).

Whether the funds subsequently used for repairs of either or both of the Temples were in part derived directly from the Municipality or merely taken by way of loan was a matter between the Central Government and the Municipality, which could not affect, as will clearly hereinafter appear, the title of the Church under the then existing relations between Church and State (fols. 10-11).

It is then alleged (fol. 9):

> "13. The City Council of the City of Ponce has included in the inventory of its property the Parochial Church described in the first allegation of the complaint, on the ground that from time immemorial the said Church has been included in that inventory. We do not know the exact date on which that inventory may have been made, but according to the information we have it only runs back a few years from this date.
>
> "14. After the change of sovereignty, the City Council of Ponce attempted to record in

the Registry of Property the possession of the said Church, and the lot upon which the same is situated, but in view of the fact that this was contrary to the provisions of paragraph 2 of article 25 of the Regulations for the application of the mortgage law, which excludes the inscription of public Temples used for Catholic worship, the Registrar of Property of the District of Ponce refused to make the inscription, unless a decision be obtained from the Secretary of Justice, to authorize the same, notwithstanding the prohibitive provisions of the Regulations. The Secretary of Justice rendered the decision applied for repealing, without being a legislative authority, the said Article 25 of the Regulations, in its second paragraph.

The two churches were registered as property of the Municipality without notice of any kind to the Catholic Church, completely ignoring the fact that such Church was the real party in lawful possession, having continuously occupied these Temples since they were built, and in complete disregard of the guaranty in the Treaty of Paris to which reference will be made (fol. 15).

The complaint, which was filed shortly before the Code of Civil Procedure for Porto Rico went into effect contains, according to the requirements of the Spanish Law of Civil Procedure, a *résumé* of the legal points upon which the suit rests.

The prayer for relief asks the Court to render judgment declaring the Roman Catholic Church legitimate owner and possessor of the said Churches and declaring that the inscriptions of possession or ownership which may appear in the Register of property in favor of the defendant be

cancelled and that the City Council of Ponce be enjoined from interfering with the recording of the said property in favor of the plaintiff (fol. 16). The judgment of the Supreme Court grants the relief demanded (Rec., p. 15).

Assignment of Errors.

The errors assigned in this case, which we print here consecutively for the convenience of the Court, are six in number, as follows (Rec., fol. 25):

> "*First.*—That the Supreme Court of Porto Rico was without jurisdiction of the subject matter in controversy.
>
> *Second.*—That said Court was without jurisdiction of the parties.
>
> *Third.*—That the said Court erred in overruling the general demurrer and the eleven special grounds of demurrer interposed by the defendant to the Complaint filed in said cause.
>
> *Fourth.*—That the said Court erred in rendering judgment against defendant in said cause, upon the pleadings in said cause, and that the judgment is contrary to the law and the facts as stated in the pleadings in said cause.
>
> *Fifth.*—That the Court erred in entering judgment without taking evidence and proofs or setting the cause upon the docket for hearing.
>
> *Sixth.*—That the said Court erred in rendering judgment in favor of the plaintiff and against the defendant in said cause."

The Questions Involved.

The questions raised by the demurrer and the assignment of errors and argued in appellant's brief are as follows:

(A) Is the Act of the Legislative Assembly of Porto Rico, conferring jurisdiction upon the Supreme Court in the class of cases to which this belongs, valid (a) in the light of the common law, Magna Charta and the Federal Constitution, and (b) in view of the Territorial Act (24 Stat., at L. 170) and the Organic Act for the Territory of Porto Rico?

(B) Has the Roman Catholic Church in Porto Rico legal capacity to sue? Is it a juristic person? Can it assert rights in a judicial forum without showing compliance with the Porto Rican statutes relating to corporations or fulfilling the requisites laid down by the Porto Rican Laws in order that a foreign corporation may be admitted "to do business in Porto Rico?"

(C) Has the Church or the Municipality title to the temples?

These are the fundamental questions raised, other minor points of a formal or procedural character being suggested, which will, we think, require little discussion.

In answer to these questions raised by the appellant, the appellee (Roman Catholic Church) contends:

A.

The Act conferring jurisdiction upon the Supreme Court is constitutional and valid and was within the powers conferred upon the Legislative Assembly of Porto Rico by Congress in the Organic Act.

B.

The Roman Catholic Church is a juristic person or legal entity under the law of Porto Rico and has always been recognized as such since the early Spanish settlement of the island. Its property rights and corporate existence are maintained, recognized and protected by the Constitution, the Treaty of Paris, and the law of Nations.

C.

The fact that the churches may originally have been built with funds of the Municipality cannot affect the title of the Church to the land and buildings. Whether given directly by the Spanish Crown or donated by the Municipality the dedication to religious uses created an indefeasible property right in the Church.

ARGUMENT.

POINT I.

The law under which this suit was brought by the Church is a valid enactment of the Legislative Assembly of Porto Rico wholly within the scope of its powers under the Organic Act.

This Act of the Legislative Assembly is found at page 134 in an official compilation of the laws called: "The Acts and Resolutions of the Second Session of the Second Legislative Assembly of Porto Rico and the Code of Civil Procedure of Porto Rico (San Juan, Porto Rico, 1904)." For the convenience of the Court the whole act is set forth below as it consists of only seven short sections. The two important sections under discussion in this case, are numbers 1 and 5, conferring original jurisdiction on the Supreme Court:

"AN ACT TO CONFER ORIGINAL JURISDICTION ON THE SUPREME COURT OF PORTO RICO FOR THE TRIAL AND ADJUDICATION OF CERTAIN PROPERTY CLAIMED BY THE ROMAN CATHOLIC CHURCH IN PORTO RICO.

Be it enacted by the Legislative Assembly of Porto Rico:

> Section 1. Original jurisdiction is hereby conferred on the Supreme Court of Porto Rico for the trial and adjudication of all questions now existing, or which may arise, between the Roman Catholic Church in Porto Rico and the People of Porto Rico, affecting

property rights, whether real or personal or mixed, claimed by either party.

Section 2. The Attorney General of Porto Rico shall be authorized to accept service for the People of Porto Rico of any citation, summons or other process issued by said Court in said Proceedings.

Section 3. The Supreme Court, for the purpose of such trial and adjudication, shall have the right to issue process for witnesses and to receive and hear testimony, and the procedure in said Court shall be the same, as near as may be, as that prescribed for the District Courts of Porto Rico in civil cases, and the Supreme Court shall have full power to enter any and all orders and decrees that may be necessary to a final and full adjudication of all the claims of either party to the proceedings, and may issue all writs or process necessary to enforce the jurisdiction hereby conferred upon said court: *Provided*, that the Attorney General of Porto Rico shall at once prepare for such hearing and trial, and if the said Roman Catholic Church does not commence proceedings under this Act within three months after its passage and approval, then, in that event, it shall be the duty of the Attorney General to commence said proceedings in behalf of the Insular Government.

Section 4. After the issues have been fully submitted to said Court upon the law and the facts, and after hearing the arguments of the respective parties, or their Counsel, the Court shall enter a final judgment and decree, fully determining the rights of either or both of the parties, and vesting the title to the subject-matter of the controversy, or any part thereof, in such party or parties, as the Court may deem entitled thereto. The said

Court may issue any and all writs that may be necessary to place the parties in quiet possession of the property so adjudicated to them, or either of them. But nothing in this Act shall be construed to limit the right of appeal, either of the People of Porto Rico or of the Roman Catholic Church, but either party may appeal from the final judgment or decree of said Court to the Supreme Court of the United States, in the manner provided by law for appeals to that Court generally.

Section 5. Original jurisdiction is hereby also conferred on the Supreme Court of Porto Rico for the trial and adjudication of all questions now existing, or which may arise, between the Roman Catholic Church in Porto Rico and any Municipality of Porto Rico, affecting property rights, whether real or personal or mixed, claimed by either party.

Section 6. The Mayor of any Municipality within Porto Rico, wherein may be situated any property over which such questions exist, shall be authorized to accept service for the Municipality of any citation, summons or other process issued by said Court in said proceedings.

Section 7. For the purpose of such trial and adjudication and appeal, all the provisions of sections 3 and 4 of this Act shall be deemed applicable.

Section 8. This Act shall take effect from and after its passage.

Approved, March 10, 1904."

I. The Organic Act.

The power to confer this jurisdiction upon the Supreme Court is derived from the

Act of Congress creating an organized government for Porto Rico. This Act is that of March 2, 1901, usually called the Foraker Act (31 U. S. Stat., p. 77), the revenue provisions of which were so fully examined and discussed in the decisions of this Honorable Court in the Insular Cases.

Section 8 of this Act provides:

> "That the laws and ordinances of Porto Rico now in force shall continue in full force and effect, except as altered, amended, or modified hereinafter, or as altered or modified by military orders and decrees in force when this Act shall take effect, and so far as the same are not inconsistent or in conflict with the statutory laws of the United States not locally inapplicable, or the provisions hereof, until altered, amended or repealed *by the legislative authority hereinafter provided for Porto Rico or by Act of Congress of the United States.*"

It is further provided (Sec. 15):

> "That the legislative authority hereinafter provided shall have power by due enactment to amend, alter, modify, or repeal any law or ordinance, civil or criminal, continued in force by this Act, as it may from time to time see fit."

The paragraph relating to the judiciary is as follows (Sec. 33):

> "That the judicial power shall be vested in the Courts and Tribunals of Porto Rico as already established and now in operation, including Municipal Courts, under and by virtue of General Orders, Numbered 118, as promulgated by Brigadier-General Davis, United States Volunteers, August 16, 1899, and in-

cluding also the Police Courts established by November 29, 1899, by Brigadier-General Davis, United States Volunteers, and the Laws and Ordinances of Porto Rico and the Municipalities thereof in force, so far as the same are not in conflict herewith, all of which Courts and Tribunals are hereby continued. The jurisdiction of said courts and the form of procedure in them, and the various officials and attachés thereof, respectively, shall be the same as defined and prescribed in and by said Laws and Ordinances, and said General Orders, numbered 118 and 195, until otherwise provided by law; provided, however, that the Chief Justice and Associate Justices of the Supreme Court and the Marshal thereof shall be appointed by the President, by and with the advice and consent of the Senate, and the Judges of the District Court shall be appointed by the Governor, by and with the advice and consent of the Executive Council, and all other officials and attachés of all the other courts shall be chosen as may be directed by the Legislative Assembly, *which shall have authority to legislate from time to time as it may see fit with respect to said courts, and any others they may deem it advisable to establish, their organization, the number of judges and officials and attachés for each, their jurisdiction, their procedure, and all other matters affecting them.*"

It would seem to be quite clear that, under these sections of the Organic Act, the Legislative Assembly has express authority to legislate regarding the jurisdiction and procedure of the Courts. It is unnecessary to cite authority for the elementary and settled proposition that the Organic Act of a Territory is its constitution or paramount law and that its local government has full power within the orbit prescribed by such Act.

It is not claimed, we take it, that the Legislative Assembly of Porto Rico did not have any power to change the jurisdiction of any of the minor local courts, but the argument seems to be that while the jurisdiction of the other Courts may be changed, the proper interpretation of this Statute prevents the Legislative Assembly from passing an Act in any wise affecting the jurisdiction of the Supreme Court or the District Courts (Appellant's Brief, p. 15). This interpretation is based upon an argument that the words "said courts" in the last five lines of the Section 33 should be confined to courts other than the Supreme Court and District Courts, wholly ignoring the general power contained in Secs. 8 and 15 above quoted. If this interpretation be sound, the Legislative Assembly has no power whatever over the Supreme Court, whose jurisdiction and procedure must be deemed to have been solemnly and irrevocably fixed and consecrated by General Orders 114 and 118, changeable only at the will and upon the initiative of the Congress of the United States.

Fortunately the grammatical construction of this Section and its plain meaning do not necessitate such an anomalous and extraordinary situation. It is quite evident upon a reading of the Statute that the words

> "the Legislative Assembly which shall have authority to legislate from time to time as it may see fit with respect to said Courts and any others," etc.

refers to all the courts mentioned in the Act and indicates no design upon the part of Congress to except the Supreme Court from its purview.

The admission is nevertheless made in Appel-

lant's argument that the Legislative Assembly would doubtless have a right to change the procedure of the Supreme Court but that it could not affect its jurisdiction nor that of the District Courts (Appellant's Brief, p. 15). We cannot understand by what chain of reasoning the Legislative Assembly would have power to change the procedure, while its hands were tied as to the jurisdiction. Procedure and jurisdiction are mentioned together and if the Legislative Assembly cannot enlarge the jurisdiction of the Supreme Court so as to bring before it directly the most important matters of litigation pending in the Island, what ground is there for assuming that it would have the right to change in the slightest degree any technical or formal matter of procedure, however unimportant in itself?

II.—Recent decisions of this Court as to power of Porto Rican Assembly over local Courts.

Discussion of the power of the Legislative Assembly under the Organic Act to modify the jurisdiction of the Courts of the Territory becomes almost academic in view of the disposition made of that question by this Honorable Court at this Term.

In Kent *v.* Porto Rico (207 U. S., p. 113, 117) it was contended that an act of the local legislature creating additional judicial districts and changing those fixed by the military orders and local law referred to in the Organic Act and also reducing the number of Judges in the District Court from three to one "was void because in conflict with the provision of the thirty-third section of the Act of Congress," the same one here relied upon by the

appellant as stereotyping the jurisdiction of the Courts into rigid forms unchangeable save by Congress.

The contention was met by the following unsympathetic reply from this Court:

> "The argument is that this local law, in so far as it changed the District Courts, and especially in so far as it provided for one instead of three judges to preside over each court, was void, because in conflict with the provision of the thirty-third section of the act of Congress. The contention amounts to this, that there were no District Courts in Porto Rico from the time of the going into effect of the Porto Rican act in 1904 up to the present time. Whilst the proposition presents a formal Federal question, we think it is clear that it is so frivolous as to bring it within the rule announced in American Railroad Co. *v.* Castro, *supra*. We say this, because we think that no other conclusion is reasonably possible from a consideration of the whole of section 33 of the act of Congress and the context of that act, particularly section 15 thereof, both of which are reproduced in the margin.
>
> We do not deem it necessary to analyze the text of the act of Congress to point out the inevitable result just stated, since the obvious meaning of the act is established by a decision heretofore rendered. Dones *v.* Urrutia, 202 U. S., 614. * * * On appeal to this court the questions raised were fully argued in printed briefs, but were deemed to be of such a frivolous character as not to require an opinion, and were hence disposed of *per curiam*, referring to the provisions of the statute and pertinent authorities."

III.—The General Law of the Territories.

It is further claimed that in the General Laws of Congress relating to the Territories are found certain prohibitions which would prevent the Legislative Assembly from changing the jurisdiction of the Court and some decisions of this Court are cited as bearing on the question.

The Legislation referred to is the Act of Congress of July 30, 1886, 24 Stat. at L., p. 170, called: "An Act to Prohibit the Passage of Local or Special Laws in the Territories of the United States, to limit Territorial indebtedness, and for other purposes."

This Statute enacts:

> "That the legislatures of the Territories of the United States now or hereafter to be organized shall not pass local or special laws in any of the following enumerated cases."

Then follows a list of matters such as the granting of divorces, the changing of names of persons, the laying out of highways, etc.

The two prohibitions upon which Appellant relies are those against "regulating the practice in courts of justice" and granting "to any corporation, association or individual any special or exclusive privilege, immunity or franchise."

It is obvious that these general prohibitions can have no application where specific permission to the contrary is granted by the Organic Act applying to the particular Territory.

Aside from that, however, the clauses referred to can have no reference to the Act of the Legislative Assembly now under consideration. This Act is obviously not a special law regulating the practice in courts of justice, as will hereafter appear

when we consider the relations between Church a State in Porto Rico, nor is it one granting to corporation, association or individual any spec.a or exclusive privilege, immunity or franchise. The statute under which this suit was brought confers the same right upon the People of Porto Rico and upon the Municipalities as upon the Church.

It has been usual in Territorial Acts for Congress to give the Local Legislature the power to regulate the jurisdiction and procedure of their courts. Such a provision is found in the various Organic Acts for the Territories which usually declare that the jurisdiction of the several Courts shall be "as limited by law"—(Organic Acts for the Territories, 59th Cong.-Senate Doc. No. 148).

In the famous old case of American Insurance Co. *v.* Canter, 1 Pet., 511, p. 543, Chief Justice Marshall, says, referring to the Organic Act of Florida, granting such power over the Courts:

> "The powers of the territorial legislature extend to all rightful objects of legislation, subject to the restriction, that their laws shall not be 'inconsistent with the laws and constitution of the United States.' "

In Hornbuckle *v.* Toombs, 18 Wall., 648, after a review of the whole question, the Court, speaking through Mr. Justice Bradley, says (p. 655):

> "Whenever Congress has proceeded to organize a government for any of the Territories, it has merely instituted a general system of courts therefor, and has committed to the Territorial assembly full power, subject to a few specified or implied conditions, of supplying all details of legislation necessary to put the system into operation, even to the defining of the jurisdiction of the several courts. * * * The powers thus exercised

by the Territorial legislatures are nearly as extensive as those exercised by any State legislature; and the jurisdiction of the Territorial courts is collectively coextensive with and correspondent to that of the State courts * * *.

From a review of the entire past legislation of Congress on the subject under consideration, our conclusion is, that the practice, pleadings, and forms and modes of proceeding of the Territorial courts, *as well as their respective jurisdictions*, subject, as before said, to a few express or implied conditions in the organic act itself, were intended to be left to the legislative action of the Territorial assemblies, and to the regulations which might be adopted by the courts themselves."

In view of these decisions commenting upon and sanctioning the general practice of Congress in conferring full power on the local assemblies in this matter, there would seem to be little excuse for attempting to evade or distinguish away the plain language of the Porto Rican Act under consideration.

This Act, far from establishing an anomaly or exception, merely repeats the action of Congress in the past in organizing other Territories, although its language is more comprehensive and precise.

IV.—Decisions as to Other Territorial Organic Acts.

The main case relied upon by the Appellant as militating against our view is that of Ferris *v.* Higley, 20 Wall., 375. That this case is distinguishable, and was the result of the peculiar con-

ditions and legislation there considered, will be apparent from a brief statement of it.

The Organic Act for the Territory of Utah gave to the Supreme and District Courts general jurisdiction at common law and in chancery. It declared (Section 9) "That the judicial power of said Territory shall be vested in a Supreme Court, District Courts, probate courts, and in justices of the peace," and further "the jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and the justices of the peace shall be as limited by law" (Senate Doc. 148, p. 105, *supra*). The Justices of the Supreme Court were to be appointed by the President of the United States.

The territorial legislature of Utah in 1858 enacted that the several probate courts in their respective counties:

> "Have power to exercise general jurisdiction in civil and criminal cases, and both in chancery and at common law."

The question as to the validity of such legislation arose in a suit involving the jurisdiction of a probate court to render judgment on a promissory note. It was held by this Court that notwithstanding the fact that the Territory had some power to change the procedure and jurisdiction of the Courts, it did not have power to confer upon a mere probate Court the same jurisdiction as that conferred by the Organic Act upon the Supreme Court, whose membership was appointed by the President. The reasoning of the decision is predicated upon the fact that the Organic Act in using the words "Probate Courts" used that language in its legal sense, as designating Courts

having a peculiarly limited jurisdiction, consequently there was an implied prohibition upon the legislature against wresting those courts from their proper place in the system established by Congress and conferring upon them jurisdiction wholly inconsistent with their proper functions as probate courts. The Act of the Legislature was evidently designed to take away from the Supreme Court the jurisdiction which properly belonged to it and to confer it upon another Court wholly the creation of the Territorial Government. It was a manifest attempt to dislocate and destroy the whole judicial system established by the Organic Act.

The distinction between a case of this kind, revolutionizing the general judiciary system as fixed by Congress, and the mere addition to the jurisdiction of the Supreme Court of a species of important controversies would seem to be sufficiently obvious.

As was said by Mr. Justice Miller, speaking for the Court, in Ferris *v.* Higley (p. 383):

> "There may be cases when that legislature [territorial] conferring new rights, or new remedies, or establishing anomalous rules of proceedings within their legislative power, may direct in what court they shall be had. Nor are we called on to deny that the functions and powers of the Probate Courts may be more specifically defined by Territorial statutes within the limit of the general idea of the nature of Probate Courts, or that certain duties not strictly of that character may be imposed on them by that legislation. * * *
>
> "We are of opinion that the one which we have been considering is inconsistent with the general scope and spirit of that act [Organic Act] in defining the courts of the Territory, and in the distribution of judicial power

> amongst them, inconsistent with the nature and purpose of a Probate Court as authorized by that act, and inconsistent with the clause which confers upon the Supreme Court and District Courts general jurisdiction in chancery as well as at common law. The fact that the judges of these latter courts are appointed by the Federal power, paid by that power—that other officers of these courts are appointed and paid in like manner—strongly repels the idea that Congress, in conferring on these courts all the powers of courts of general jurisdiction, both civil and criminal, intended to leave to the Territorial legislature the power to practically evade or obstruct the exercise of those powers by conferring precisely the same jurisdiction on courts created *and appointed by* the Territory".

Furthermore the word Supreme unlike the word Probate is not a technical word belonging wholly to the domain of jurisprudential terminology, but is one which has no distinct and defined legal content.

Bouvier (Law Dictionary) under the word "Supreme Court" says:

> "A Court of superior jurisdiction in many of the States of the United States. The name is properly applied to the Court of last resort, and is so used in most of the States. In nearly all the States there is a Supreme Court; but in one or two there is a Court of Appellate Jurisdiction from the Supreme Court."

This is true both of New York and Massachusetts, where the primary functions of the Supreme Court are the exercise of general original jurisdiction, and in England, where the Supreme Court

of Judicature includes all the Superior Courts of general jurisdiction. These may be facts wholly at variance with proper respect for etymological rules, but they are facts which exclude any inference that the term "Supreme Court" necessarily excludes the idea of original jurisdiction. The Supreme Court of the Island is now in a very large class of cases merely a court of intermediate appeal, since this Court may review its decisions.

The Century Dictionary under the head Court (sub-head Supreme Court) so describes the term "Supreme Court":

> "Supreme Court, the designation usually prescribed by law for the highest court of the state or nation which has any original jurisdiction of a general nature. In the United States the name is usually given to the court having a general appellate jurisdiction over inferior courts, and original jurisdiction to supervise the proceedings of inferior courts and of public officers, by the special writs of mandamus, certiorari, prohibition, habeas corpus, quo warranto, and the like. The term has no fixed general meaning apart from the statute conferring it. For instance, in many States the jurisdiction of the Supreme Court is purely appellate and supervisory. In England the Supreme Court includes the various divisions, Chancery, Queen's Bench, etc. (formerly called the Superior Courts, which have original and appellate jurisdiction) and the Court of Appeal (which has no original jurisdiction, but reviews the proceedings of the various divisions); and the decisions of the Court of Appeal are in turn reviewed by appeal to the House of Lords. In New York the name is given to the court having general original jurisdiction at law and in equity throughout the State, of all classes of actions, civil and criminal, except such minor, local

and peculiar matters as for reasons of convenience are confined in the first instance to inferior courts; and its final judgments are for the most part subject to review in the Court of Appeals. But it has also appellate jurisdiction over many inferior courts. In New Jersey the Supreme Court has both original and appellate jurisdiction at law, while the equity jurisdiction is vested in the Court of Chancery, and both are subject to review in the Court of Errors and Appeals. In Connecticut the court of general original jurisdiction in law and equity is termed the Superior Court and the appellate court is termed the Supreme Court of Errors. In Kentucky the term Superior Court is given to an appellate court, whose decisions are in turn reviewed by a Court of Appeals. The Supreme Court of the United States has original jurisdiction in cases affecting ambassadors and other public ministers and consuls, and those in which a State is a party."

(Century Dic., p. 1313.)

Probate on the other hand has a definite meaning in English law. It long ago became a purely technical term having exclusive reference to wills, testaments and decedents' estates.

In the Century Dictionary we find:

"*Probate*: * * * relating to the proof or establishment of wills, testaments. * * * *Probate Courts*, the general name given in American law to courts having jurisdiction of probate and administration. Often more specifically called Orphans' Courts, Surrogates Courts, etc."

And in Bouvier:

"*Probate.*—originally relating to proof; afterward relating to the proof of wills. In

> American law now a general name or term used to include all matters of which probate courts have jurisdiction."

The Supreme Court of Minnesota says:

> "In common understanding this (Probate) is as distinct and clearly defined a branch of the law as is criminal law or corporation law, and in popular signification the term 'Probate law' includes all matters of which Probate courts generally have jurisdiction, among which is estates of deceased persons."
>
> Johnson *v.* Harrison, 47 Minn., 575, at p. 579.

A Probate Court is a historic institution like the Court of Kings Bench, the Court of Exchequer or the Court of Chancery. A Supreme Court, as such, has no place in the historic development of English law.

There can, thus, be no sound analogy between an act transforming a mere Probate Court into one of general jurisdiction and one conferring, in a special and highly important class of controversies, original jurisdiction upon a so-called Supreme Court. The distinction, therefore, between the law under consideration in Ferris *v.* Higley and that of the Porto Rican Assembly is fundamental.

The underlying reason which dictated the decision in the case of Ferris *v.* Higley is wholly absent in the case at bar. Here there is no attempt to effect a complete metamorphosis by which one kind of tribunal becomes another of an altogether different species. Instead of virtually destroying the jurisdiction of the principal

court in the Territory, we have an enlargement of its jurisdiction by the submission to it of a class of controversies necessarily involving important historical and legal considerations, a just solution of which must deeply affect the welfare of the whole Porto Rican people.

An examination of the cases in this Court in which Ferris *v.* Highley was considered, indicate how exceptional were the circumstances which necessitated that decision and how reluctant is this Court to declare Territorial Legislatures to have acted in excess of their power in modifying the jurisdiction and procedure of local Courts.

In Bent *v.* Thompson, 138 U. S., p. 114, in considering the powers of probate courts in the territory of New Mexico, this Court, commenting upon Ferris *v.* Higley, said (at p. 122):

> "In regard to the argument made, that by the provision in the Organic Act of New Mexico, declaring that the jurisdiction of the probate court should be "as limited by law," the practice and procedure of the common law touching matters of probate came into force in New Mexico regardless of any statutory provisions of the Territory, which view is sought to be supported by a reference to Ferris *v.* Higley, 20 Wall., 375, it may be said that that case relates only to the jurisdiction and not to the practice of those courts * * *."

In the very recent case of James *v.* Appel, 192 U. S., 129, Mr. Justice Holmes, speaking for this Court, said (pp. 137-8):

> "It is said that the right to grant new trials was a well recognized incident of common law jurisdiction, and that it cannot be taken away or cut down by the territorial legislature. In view of the provision in § 1866, that the juris-

> diction given by § 1908 'shall be limited by law,' and indeed apart from it, we should hesitate to say that the territorial legislature was prevented by the grant of common law jurisdiction, in general words, from doing away with new trials altogether. A rule of practice like this does not touch jurisdiction in any proper sense. Ferris *v.* Higley, 20 Wall., 375, cited by the appellant, has no application. Apart from other differences, that was a case of an attempt to confer original jurisdiction in civil and criminal cases, both in chancery and common law, upon the probate courts. We certainly see nothing to prohibit the local legislature from making this not unusual or unreasonable rule. See Hornbuckle *v.* Toombs, 18 Wall., 648; Bent *v.* Thompson, 138 U. S., 114; Greeley *v.* Winsor, 1 So. Dak., 618, 631."

In Territory *v.* Ortiz, 1 New Mexico, 5, there are some dicta relied upon by the Appellant to the effect that the local legislature would under the Organic Act of Mexico have no power to confer on the Supreme Court authority to issue a mandamus. It will be observed that the act in question limited the jurisdiction of the Supreme Court much more narrowly than does the Foraker Act, moreover the expressions in the opinions, much more sweeping than the facts warrant, are inconsistent with the decisions of this Court.

Martin *v.* Oklahoma, 8 Okl., 41, can have no relevancy, it being obvious that a territorial law which requires for its validity a Congressional ratification cannot be repealed by the local legislature in the very nature of things.

Hence there is nothing in the cases, either in the Supreme Court or in the State Courts to sustain the proposition that the Organic Act of Porto Rico

does not confer upon the local legislature sufficient power to enlarge the jurisdiction of the Supreme Court by submitting to it a certain class of controversies.

V.—History of Supreme Court of Porto Rico.

Under the Spanish system prevailing in the island at the date of the American occupation there was no Supreme Court or tribunal of final appeal in Porto Rico. All appeals from the local courts ran to Madrid for the determination of the Supreme Court or Council of the Kingdom. In San Juan there was a court known as the Audiencia Territorial. This was an Appellate Tribunal for cases in which the claim exceeded 200 pesos. There was also another court composed of a President, two members of the Audiencia Territorial and two deputies, designated *Tribunal Local Contensioso Administrativo* which had jurisdiction over claims against the Government for damages to private interests. From this Court appeals ran to the *Tribunal Contentioso* at Madrid. (For an account of the Spanish Judicial system in the Island see Major Sharpe's Report in Report of the War Dept.,—1899, Vol. I, part 6, p. 691 *et seq.* See also an account of the judicial system in Cuba, substantially the same as in Porto Rico, by the eminent Cuban jurist, Dr. J. A. G. Lanuza, Secretary of Justice of Cuba, during the Military Government of General Brooke. Report of War Dept., 1899, Vol. I, part 6, p. 251 *et seq.*).

A brief *résumé* of the history of the organization of the Porto Rican Courts is contained in the First Annual Report of Charles H. Allen, Governor of Porto Rico, 1900-1901, pp. 80, 81, and 82. The Governor there states that:

"The judiciary of this Island was found at the beginning of the American occupation to be the same as in the other dependencies of Spain. The highest Court was the territorial Audiencia, sitting at San Juan, from which there was an appeal to the Supreme Court in Madrid, Spain. This Audiencia was composed of six judges and had original criminal jurisdiction; also appellate jurisdiction in civil cases from the Courts of First Instance. There were also Audiencias at Ponce and Mayaguez, one at each place, having criminal jurisdiction only, and each composed of three judges.

The next in rank and importance were the Courts of First Instance and Instruction, of which there were twelve, each having a separate district. * * *

Under the military administration the Courts were reorganized by General Orders No. 118 issued on August 16, 1899. The Courts of First Instance and Instruction were abolished and their duties distributed to other tribunals. The municipal courts were retained with two associate judges added. * * * Five district courts were established of three judges each, having civil and criminal jurisdiction and appellate jurisdiction from inferior courts. * * * The Audiencias were abolished *and their functions conferred on the district courts and the Supreme Court.* The highest Court in the Island was called the Supreme Court of Justice with a fixed residence at San Juan. It was composed of a chief justice and four associate justices having appellate jurisdiction in all civil and criminal cases.

By him the abolished courts were distributed among those retained and created by the military authorities".

Thus the Courts of Porto Rico under the Military Government consisted of:

First, one Supreme Court of five justices,

Second, Five District Courts of three judges each,

Third, Sixty-nine Municipal Courts of three judges each,

Fourth, Sixty-nine Police Courts, consisting of the Alcaldes in each municipality, and

Fifth, the United States Provisional Court with three judges.

The portions of the two orders in question organizing the Supreme Court are very brief and are found in the Report of Brig.-General George W. Davis, U. S. V., on Civil Affairs of Porto Rico, 1899. General Order No. 114 provides (War Dept. Report, 1899, Vol. I, part 6, p. 607):

> "Upon the recommendation of the judicial board, the judicial system of Porto Rico is reorganized as follows, to take effect on August 10, 1899, on and after which date the present system will cease to exist, according to instructions which will be published later."
>
> "The Supreme Court of Porto Rico with residence fixed in San Juan will hereafter consist of one Chief Justice and four associate justices, who will constitute a judicial bench for all civil and criminal business. The prosecuting attorney shall also be attached thereto, who shall represent the State on all proper occasions."

The Island is then divided into five judicial districts and the appointments to the Supreme Court and to the Courts of the Districts then follow.

General Orders 118 of August 16, 1899 (Do., p. 612), seem to be complementary to General Orders 114 and the portions referring to the Supreme Court are as follows:

"Upon the recommendation of the Judicial Board the following reorganization and functions of the judiciary of this Island were approved on August 10, 1899, and are published for the information and guidance of all concerned.

1. The organization and functions of the courts of justice of this Island will from the 10th inst. undergo reforms in accordance with the following dispositions:

There shall be a Supreme Court of Justice, with fixed residence in the City of San Juan, composed of a Chief Justice and four associate justices, who jointly will constitute a judicial bench for all civil and criminal business; the Court shall also have a prosecuting attorney, one secretary, two court clerks, etc."

Further provision is made limiting the Districts, and it is declared that:

"9. Justice in civil and criminal matters will be administered in each district by a court established in its respective capitol. These courts will have exclusive jurisdiction in public oral trial of all classes of civil and criminal matters under the forms and procedure established further on in this General Order.

"10. Each District Court will be composed of three judges, one of whom shall be presiding judge and who jointly shall constitute a bench for civil and criminal business."

It is further provided,

"78. Appeal to the Supreme Court will lie in all civil suits for infraction of law and error in procedure in the cases which the laws of civil procedure defines for the latter, but not for suits heard before municipal courts.

> "79. Beside the cases defined by the law of civil procedure, such appeal will also lie for error in the consideration of proofs. In criminal trials appeal may be taken for infraction of law and error in procedure in cases defined by the law of criminal procedure."

From these orders it appears that the jurisdiction of the Supreme Court was nowhere specifically defined and it is only by inference that the orders can be said to have treated it wholly as an appellate court.

In the message of the Honorable William H. Hunt, Governor of Porto Rico, to the Second Legislative Assembly, First Session, January 13, 1903 (Third Annual Report, Governor of Porto Rico, Senate Document No. 26, 58 Cong., 1st sess.), appears the following:

> "The jurisdiction of the several courts of the Island ought to be considered, having in mind a revision which will result in a clear codification of the various laws and orders now in force. In connection with such an act I recommend that you enlarge the jurisdiction of the Supreme Court by making it a Court of Appeals with jurisdiction in a case properly presented to amend, modify or reverse the judgment appealed from, as the record may warrant."

In 1904 the Legislative Assembly passed an Act reorganizing the judiciary of Porto Rico (The Acts and Resolutions of the Second Session of the Second Legislative Assembly of Porto Rico, p. 103). By this Act the various judicial districts are modified and defined geographically, various procedural matters are provided for, certain court offices are created, but nothing in this act appears to affect the jurisdiction of the Supreme Court.

There are other acts relating to the competency of witnesses, procedure and jury trial (p. 130), authorizing writs of prohibition (p. 131), authorizing writs of certiorari to be issued by the Supreme Court in the respective district courts of Porto Rico (p. 133) and then follows the Act conferring jurisdiction as to the adjudication of all questions between the Roman Catholic Church and the People of Porto Rico or any of the Municipalities thereof.

In the report the Hon. James S. Harlan, Attorney General, annexed to Governor Allen's report, are found certain criticisms upon the restricted jurisdiction of the Supreme Court, especially in regard to criminal appeals.

> "No latitude is given nor is there opportunity for a reversal of a judgment by the Supreme Court on the facts; there is left for its consideration only the application of the laws to the facts thus found. It it merely a Court of cassation. * * * Matters of fact which may have escaped the attention of the trial court and in which there may be manifest error cannot now be considered by the Supreme Court, except as a Court of Cassation" (p. 134).

It does not seem to have occurred to the learned Attorney General that in order to enlarge this jurisdiction so that it might become reformatory as well as cassational, an Act of the Congress of the United States was necessary.

In speaking of the character of the judiciary in the island and of the feeling entertained toward the Courts, he says:

> "The Supreme Court of the Island, which is the Court of Last Resort, seems beyond

question to enjoy the esteem and respect of the people without regard to party" (p. 136).

In his message of June 28, 1900, to the Legislative Assembly the Governor recommends no less a change in the judicial system than the adoption of the institution of trial by jury. It does not seem to have suggested itself to him that the Legislative Assembly did not, under the Organic Act, have this power, nor does the Legislative Assembly itself seem to have hesitated to carry out the Governor's recommendations in this respect.

Full provisions for a jury trial were made by act of the Legislative Assembly of Porto Rico, approved January 31, 1901 (R. S. and Codes of Porto Rico, p. 172, Sec. 393, *et seq.*).

It is not easy to conceive a greater and more radical change in a judicial system than that of the adoption of jury trial where none existed; and yet the question of conflict with the Organic Act does not seem to have been thought of as possibly involved.

In the Fourth Annual Report of the Governor of Porto Rico, covering the period from July, 1903, to June, 1904, Senate Document 35, 58th Cong., 3rd Sess., Governor Hunt says:

> "The Supreme Court remains as constituted under the Foraker Act, having been changed, however, on the 12th of March, 1904, from a Court of cassation to a Court of Appeals now having authority to review the whole case, both on the law and the facts, either on the criminal or civil side of the docket and to affirm, reverse or modify the judgment of the Court below, rendering a new judgment in certain cases and if necessary remanding cases to the Trial Court for a new hearing. This makes the practice in the Su-

preme Court much more flexible and enables that tribunal to be much more efficient in the administration of justice.

The Supreme Court enjoys the unlimited confidence of all classes of the people for its integrity, ability and learning as well as for its unflagging devotion to duty."

He comments further upon the enactment of a new code of Civil Procedure and concludes that there remain now in force in Porto Rico only two of the ancient Spanish Codes, namely, the Code of Commerce and the Mortgage Law. Speaking of them, he says:

> "These are both considered by Porto Rican judges and lawyers to be almost perfect in their several departments and it is possible that they will only be modified in so far as may be necessary to conform them to the American Codes which have been already adopted. We have now in the Island a political code, a civil code, a code of civil procedure, a penal code, a code of criminal procedure modeled after the American system, and many other statutes such as the bill of rights, the jury law, martial law and the like which had been adopted from the Continent."

It would be difficult to find in recent history an instance of a more complete remodeling not only of judicial organization but of substantive law and legal procedure than in Porto Rico since the American occupation, and yet this modification or rather re-creation was brought about mainly by the action of the local legislature. To assert that the law under which this suit was brought is an invalid exercise of power by the Legislative Assembly, is to condemn as invalid this whole legal system, enacted by the Assembly in pursu-

ance of the general policy of assimilating and Americanizing the Island of Porto Rico. If the Organic Act conferred upon the Local Government broad powers and if its provisions, in regard at least to the judiciary, are more sweeping than those of many of the other Territorial Acts, it was doubtless because Congress had in mind the necessity for this very considerable work of legal renovation by the Legislative Assembly.

The determination of controversies between the State and the Church was thus very naturally devolved upon the Supreme Court. Under the Spanish *régime* they would not have come within the competency of the ordinary local courts. When not the subject of direct negotiation between the Spanish Government and the Holy See they might have come before the Special Administrative tribunals, which, in countries whose basic institutions are Roman, exist to determine controversies directly affecting the rights of the government. It is peculiarly appropriate that the Porto Rican Supreme Court should have original jurisdiction in controversies between Church and State, when it is remembered that the property here in question is specifically guaranteed by the Treaty. This Act may also be fairly regarded as a submission by the Legislative Assembly to the Supreme Court of certain claims against the Territory or its administrative subdivisions. The right of a Territory to admit its suability is beyond question.

(Kawananakoa *v.* Polyblank, 205 U. S., 349, at 353.)

VI.—The Act under consideration is not objectionable as a Special Law.

The objections made by the Appellant on the ground of the alleged special character of this Act are wholly untenable.

The provisions of Magna Charta quoted by Appellant's counsel related to certain particular abuses existing at that time in England and have no application to the case at bar. The Act did not create a special tribunal but merely conferred additional jurisdiction upon the already existing principal tribunal of the Island.

As already shown, the Act does not come within any prohibition of the general Act relating to Territories, or of the Organic Act providing for the Government of Porto Rico.

It is not necessary to determine how far the United States Constitution has been extended to or is in force in Porto Rico. Clearly the Fourteenth Amendment has no application, since that operates only upon the States. The only Constitutional provision which has any relation to the question at bar is the inhibition against the deprivation of any person of property without "due process of law." The Appellant apparently contends that the act is special legislation and hence is not "due process of law," citing in support of this proposition two Tennessee Cases, viz.:

Wally's Heirs *v.* Kennedy, 2 Yerg., 554, and
State Bank *v.* Cooper, 2 Yerg., 599.

Neither of these is in point. In the first, the Court held unconstitutional an act which attempt-

ed to prescribe a special rule of law for a single class of cases, namely, that a suit brought to recover Indian reservation lands should be dismissed, if it were made to appear that it "was prosecuted in trust for another," and not for the benefit of the plaintiff.

In the second, the act considered created a special tribunal for the trial of suits by the Bank of the State of Tennessee against its officers and certain other parties, without a jury, and without any right of appeal. This clearly denied to the defendants their right to due process of law, and was properly held unconstitutional.

That the unconstitutionality of this last act did not lie in the fact that it referred to a single named corporation is evident from another decision by the same Court in the same Volume of Reports, viz.:

Vanzant *v.* Waddel, 2 Yerg., 260.

Here an act gave certain special and additional remedies to the creditors of two particular banks, named in the act. Judge Catron (afterwards Mr. Justice Catron of this Court), delivered an opinion in which he emphasized, in an oft-quoted passage, the rule that the "law of the land" means "a general and public law, equally binding upon every member of the community," but held that the act in question did not deprive the defendant of any right of defence or of "the full benefit of the general laws of the country in resisting the claim," and was therefore valid. One of the other judges in the same case pointed out "that it is not an infringement of the Constitution to come in aid of a remedy." The provision in the Tennessee Constitution under consideration was substantial-

ly identical with the corresponding provision in the U. S. Constitution and in Magna Charta.

See also the citations of this case in

Cotting *v.* Kansas City Stock Yards Co., 183 U. S., at p. 105, and
People *ex rel.* Kenny *v.* Folks, 89 App. Div. (N. Y.), at p. 179.

The question has also been squarely determined by this Court in U. S. *v.* Union Pac. R. R. Co., 98 U. S., 569.

That suit was instituted under a Special Act of Congress directing that it be brought against the defendant Railroad, and providing special rules of procedure therefor. It was argued in defence that the statute conferred "a special jurisdiction to try a single case," and granted to the complainant "new and substantial rights, at the expense and by a corresponding invasion of those of the defendants."

The Court was of opinion that the special provisions of the act only related to procedure, but said (p. 605):

> "But if this be otherwise, we are aware of no constitutional objection to the power of the legislative body to confer on an existing Court a special jurisdiction to try a specific matter which in its nature is of judicial cognizance."

See also

Bank of Columbia *v.* Okely, 4 Wheat., 255.
Bank of Newbern *v.* Taylor, 6 N. C., 266.

In the case at bar, it is clear that the Act does not deprive any party to the suits which may be brought thereunder of any right, or of the benefit of any rule of law, or even of any remedy. It does not take away from the District Courts any jurisdiction which they previously possessed, or prevent any party from having recourse to them. The jurisdiction which it confers upon the Supreme Court does not purport to be exclusive.

It is also well established that legislation may properly apply a system of classification so long as it has a basis of reason and is not merely arbitrary (Bechtel *v.* Wilson, 204 U. S., 36). The act in question is good on this theory also, since the Roman Catholic Church is indisputably an organization which is wholly *sui generis* and constitutes a class having no other members.

If the Fourteenth Amendment had any operation except upon the States of the Union, the Act in question would not be obnoxious to it. It does not deny to any person the equal protection of any laws whatever, or establish any special rules of law applicable to particular persons or particular controversies. It merely opens another tribunal to a certain particularly important class of controversies, that they may be the more speedily and conveniently determined for the general good of the public.

POINT II.

The Roman Catholic Church in Porto Rico is a juristic personality and a legal entity under the laws of Porto Rico, as it had always been under the Spanish laws in force in the island at the time of the ratification of the Treaty of Paris.

Appellant's proposition as stated in the language of his brief is as follows (pp. 20-21):

> "Our contention is that the Roman Catholic Church in Porto Rico has not the legal capacity to sue, for the reason that it is not a judicial person, nor a legal entity, and is without legal incorporation. * * *
>
> If it is a corporation or association, we submit to the Court that it is necessary for the Roman Catholic Church to specifically allege its incorporation, where incorporated, and by virtue of what authority or law it was incorporated, and if a foreign corporation show that it has filed its articles of incorporation or association in the proper office of the Government in accordance with the laws of Porto Rico."

Since April 11, 1899, Porto Rico has been *de facto* and *de jure* American territory. The history of Porto Rico and its legal and political institutions up to the time of its annexation to the United States are matters which this Court can no more overlook or ignore than it can the history and the ancient laws or institutions of the States of Massachusetts or New York, when matters come before

it from these jurisdictions (Fremont *v.* U. S., 17 How., 542, at 557).

The Court will take judicial notice of the Spanish law as far as it affects our Insular Possessions. It is *pro tanto* no longer foreign law (Insular cases generally, 182 U. S., 1; Hawaii *v.* Mankichi, 192 U. S., 197; Dorr *v.* U. S., 195 U. S., 138; Trono *v.* U. S., 199 U. S., 521; Perez *v.* Hernandez, 202 U. S., 80-95; Ortega *v.* Lara, 202 U. S., 339). The legal and historical facts which we shall adduce, therefore, require no proof. They are either matters of general history or they belong to the history of the law of Porto Rico which may be found in the authorities hereinafter referred to.

The position taken by the appellant so wholly ignores all the past history of Porto Rico and the legal and political position occupied by the Roman Catholic Church in that Island that it becomes necessary briefly to summarize the legal situation in respect to the relation subsisting between the Spanish Government in that Island and the Church.

I.—The Spanish Code and Mortgage Law as Affecting the Legal Status of the Church.

Before entering upon a consideration of the history of the church in Porto Rico we may refer to the Civil Code in force in Cuba, Porto Rico and the Philippines at the time of the Treaty of Paris. The Civil Code has been translated by the War Department and issued from the Government printing office (Translation of the Civil Code), Chap. 2, Art. 35, provides:

> "Art. 35. The following are judicial persons. The corporations, associations and institutions of public interest recognized by law. Their personality begins from the very in-

stant in which in accordance with law they are validly established."

"Art. 38. Judicial persons may acquire and possess property of all kinds as well as contract obligations and institute civil or criminal actions in accordance with the laws and rules of their establishment.

The church shall be governed in this particular by what has been agreed upon by both powers and educational and charitable institutions by the provisions of special laws" (also Rec., fol. 12).

The phrase "agreed upon by both powers" can only refer to the "Concordats" or Treaties between the Holy See and the Spanish Crown, which will be further discussed hereafter and which emphatically recognize the right of the Church to possess and acquire property (Rec., fol. 13).

The law thus recognized at the time of the cession the juristic personality and legal status of the Church.

As stated by the learned Chief Justice very recently:

> "By the general rule of public law, recognized by the United States, whenever political jurisdiction and legislative power over territory are transferred from one nation to another, the laws of the country transferred, intended for the protection of private rights, continue in force until abrogated or changed by the new government. Of course, in case of cession to the United States, laws of the ceded country inconsistent with the Constitution and laws of the United States so far as applicable would cease to be of obligatory force; but otherwise the municipal laws of the acquired country continue.
>
> Nevertheless, and apparently largely out of abundant caution, the eighth section of the

> Act of April 12, 1900, provided 'That the laws and ordinances of Porto Rico now in force shall continue in full force and effect, except as altered, amended, or modified hereinafter, or as altered or modified by military orders and decrees in force when this act shall take effect, and so far as the same are not inconsistent or in conflict with the statutory laws of the United States not locally inapplicable, or the provisions hereof, until altered, amended, or repealed by the legislative authority hereinafter provided for Porto Rico or by act of Congress of the United States. * * *' "
>
> (Ortega *v.* Lara, 202 U. S., 339, p. 342.)

Article 8 of the Treaty of Paris completely protects the rights of the Church.

> "And it is hereby declared that the relinquishment or cession as the case may be to which the preceding paragraph refers cannot in any respect impair the property or rights which by law belongs to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments, *ecclesiastical or civic bodies or any other associations having legal capacity to acquire and possess property in the aforesaid territories*, renounced or ceded, or of private individuals of whatever nationality such individuals may be."

This clause is so manifestly intended to guard the property of the Church against interference with, or spoliation by, the new master, either directly or through his local governmental agents, that ordinarily we should be satisfied to let the case rest upon this short and complete ground.

There can be no question that the ecclesiastical body referred to, so far as Porto Rico was concerned, could only be the Roman Catholic Church in that Island, for no other ecclesiastical body there existed.

The Mortgage Law, in force in Porto Rico both before the cession and at present, provided for the registration generally of

> "Title deeds of real property or property rights owned or administered by the State or by civil or ecclesiastical corporations, subject to the provisions of law or regulations." (Art. 2, Paragraph 6.)

But this was qualified by the general regulations for the execution of the Mortgage Law (see Translation of General Regulations for the execution of the Mortgage Law for Cuba, Porto Rico, and the Philippines, War Department, 1899) which provided:

> "Art. 25. Exceptions to the record required by two of the laws are
>
> First: Property which belongs exclusively to the eminent domain of the State, such as the shores of the sea, Islands, etc., etc., walls of cities and parts, ports and roadsteads and any other analogous property during the time they are in common and general use;
>
> *Second, public temples, dedicated to the Catholic faith.*"

It is thus made plain that the Temples in question were not subject to the Registration Law, and were recognized as a peculiar class of property, wholly different from that belonging to private individuals.

The fallacy of Appellant's basic proposition may well be illustrated by a brief sketch of the

legal position of the Church in Europe from the *time of* the Roman Empire.

II.—The Roman Catholic Church has been recognized as possessing a legal personality and a capacity to take and acquire property since the time of the Emperor Constantine.

The claim that the church in Porto Rico does not possess juristic capacity seems strange in face of the fact that an examination of European law shows it to be the oldest corporation in existence. We find in the Code of Justinian the law of the Emperor Constantine, 321 A. D., recognizing the corporate entity of the church and its power to acquire property. This interesting and ancient statute reads as follows:

"TITULUS II.

De Sacrosanctis Ecclesiis, de Rebus ac Privilegiis Earum.

I. Imperator Constantinus, ad Populum.

Habeat unusquisque licentiam, sanctissimo catholico venerabilique concilio decedens bonorum, quod optaverit, relinquere: et non sint cassa judicia ejus. Nihil enim est, quod magis hominibus debeatur, quam ut supremae voluntatis, postquam jam aliud velle non possunt, liber sit stylus, et licitum quod iterum non redit arbitrium.

P. p. v. non. jul. Romae, Crispo II et Constantino-Caesare II, Coss. 321."

Code of the Emperor Justinian, Book I, Tit. 2, Par. 1, Tissot, Vol. I, p. 27.

Translation.

"Any person shall have the right to leave any portion of his property to a holy catholic and respectable assembly [that is to say to a religious and lawful body] and such dispositions are valid: for the last thing that can be prohibited is the right of a dying man to exercise his last will, since he soon will have no will at all.

Made at Rome the 5th day of the nones of July under the Consulate of Crispus, Consul for the second time and of Constantine-Caesar, Consul for the second time, 321."

The first book of this Code relates wholly to ecclesiastical matters. We find the Emperor Justinian recognizing the hegemony or authority of the Pope and the Roman Church. In a rescript or edict we find the following interesting statement:

"Justinian, victorious, pious, happy, illustrious, triumphant always, to John, patriarch and very holy archbishop of the City of Rome; honoring the Apostolic See and your Holiness for whom we have never ceased to make our prayers, and whom we regard as our father, we hasten to give you information of all affairs which concern the state of the church. As we have always attempted to maintain the unity of your Apostolic See and to maintain the Holy Church of God in the condition in which they now are, that is to say, in peace and exempt from all differences, we have required all the priests of the Orient to unite themselves to as well as to submit themselves to Your Holiness; but now that certain doubts have arisen, although about matters clear and certain and conforming to the doctrine of your Apostolic See, formally guarded and professed by all the priests, we have nevertheless

thought it necessary to inform Your Holiness of the fact; because we will not permit the matters which arise on the subject of religion, although simple and not doubtful, to be agitated without the knowledge of Your Holiness, who is the chief of the church; for we will always strive as we have said to increase the honor and the authority of your See."

(Book 1, Title 1, Par. 3.)

We find in this same Code the strictest prohibition against alienating the property of the Church. In an edict of the emperors Leo and Anthemius to Armasius, Pretorian Prefect, it is said:

"Jubemus, nulli posthac archiepiscopo in hac urbe regia sacrosanctae orthodoxae ecclesiae praesidenti, nulli oeconomo, cui res ecclesiastica gubernanda mandatur, esse facultatem, fundos vel praedia, sive urbana, sive rustica, res postremo immobiles, aut in his praediis colonos, vel mancipia constituta, aut annonas civiles cujuscunque supreme vel superstitis voluntate ad religiosas ecclesias devolutas, sub cujuscunque alienationis specie ad quamcunque transferre personam." (Tissot, Vol. I, p. 33).

Translation.

"We forbid every archbishop of this royal city presiding over the holy and orthodox church and every person charged with the administration of church property, from transferring to any person or by any mode of transfer whatever either funds or inheritances whether urban or rural, or in a word any immovable property with any of its accessories, such as serfs, slaves, and the pensions acquired by the churches by testament or by gifts *inter vivos.*"

The edict further provides that such an alienation of church property shall not take place, even with the assent of the clerks, the bishop and all the other representatives of the church, since these rights "belong to the church" and the church is the mother of religion, and as faith is perpetual its patrimony must be preserved in its entirety perpetually.

We find further that the ordinary rules of prescription did not run against the Roman Church. An extract from one of the Novels says:

> "Authent. ex novell. 131, c. 6.
> "Quas actiones alias decennalis, alias vicennalis, alias tricennalis praescriptio excludit, hae si loco religioso competant, quadraginta annis excluduntur, usucapione triennii, vel quadriennii praescriptione in suo robore durantibus, *sola romana ecclesia gaudente centum amorum spatio vel privilegio*" (Tissot, Vol. I, p. 45).

Translation.

> "Some actions are barred by prescription of ten years, others by that of twenty years, others by that of thirty, but if they have for their object religious property they are only prescribed by a lapse of forty years; the *usucaption* of three years or the prescription of four years preserving all their force. *The Roman Church alone enjoys the privilege of the prescription of one hundred years.*"

The personality of the church and its property rights are thus definitely and clearly recognized and maintained by the Justinian Codification, the basis of all European law.

Citations might be cumulated at great and on the part of the Roman emperors following Constantine of the rights of the church and its corporate capacity. It will appear from our examination of the Spanish law hereafter that all its fundamental ideas even as to prescription of actions in regard to church property were taken, in some instances almost verbatim, from the Roman law.

But even the Roman law as to Christian churches was no innovation. The erudite Dean Milman says:

> "The Christian churches succeeded to that sanctity which the ancient law had attributed to the temples. As soon as they were consecrated they became public property, and could not be alienated to any other use. The ground itself was hallowed, and remained so even after the temple had been destroyed. This was an axiom of the heathen Papinian. Gifts to temples were alike inalienable, nor could they be pledged; the exception in the Justinian code betrays at once the decline of the Roman power, and the silent progress of Christian humanity. They could be sold or pledged for the redemption of captives, a purpose which the old Roman law would have disdained to contemplate."
>
> *Milman's History of Latin Christianity,* Vol. I, p. 507.

In the barbarian codes, based to a great extent upon existing Roman law, most sweeping provisions are found recognizing the right of the Church to acquire property and its inalienability when acquired. Church property everywhere

remained untouched by the rude hands of the invading barbarians. Trespass upon or interference with such property was severely punished and gradually it became exempted from taxation.

Milman id., pp. 535-537.

III.—The Ancient Spanish Law.

The historic continuity of the juristic conceptions exemplified by the foregoing citations from the Civil Law is shown by the Partidas, the fundamental code of ancient Spanish Law compiled by Alfonso the Wise (1252 A. D.).

This is especially illustrated by the following provisions:

PART. I, TIT. X, LAW II.

This law prescribed the proceedings and ceremonies requisite for the consecration of a Church. It contains, among other things, the following provision:

Text.	*Translation.*
"* * * E estonce deue dezir ante todos, como otorga a este logar para Eglesia. Pero ante quel Obispo esto faga, ha de demandar a los que quisieren fazer la Eglesia, que le señalen alguna heredad, que finque siempre para ella * * ."	"* * * And then he (the Bishop) must say before all how he dedicates that place for a Church. But before the Bishop does this he must require of those who seek to erect the Church that they designate an endowment for it, which shall perpetually supply its revenue * * * ."

This shows that whoever built a Church was required to provide it with an adequate perpetual endowment as well as a site, and clearly rebuts any idea of a retention of ownership by the donors of the land or the contributors to the building.

PART. I, TIT. XI, LAW I.

This law enumerates various privileges of the Church, and continues as follows:

Text.	*Translation.*
"* * * E aun sin estas, han otras franquezas las Eglesias que las heredades que les fuessen dadas, o vendidas, o mandadas en testamento derechamente, maguer non fuessen apoderadas dellos ganan el señorio e el derecho, que a ellas auia aquel que las dio, o vendio, o mando, de que manera que las puede demandar per suyas, a quien quier que las tenga."	"* * * And in addition, the Churches have other privileges: that as to the estates which have been given or sold or left to them lawfully by will, even if they have not received possession of them, they get the title and right which has been given or sold or left to them, so that they can demand them for their own against whomsoever may hold them."

This indicates how thoroughly well recognized was the right of the Churches to take and hold property.

PART. I, TIT. XIV, LAW I.

Here we find a general prohibition against the alienation of Church property, and an enumeration of six special purposes for which alienation is permitted, as follows:

1. To pay a debt which the Church cannot otherwise meet.

2. To ransom parishioners.

3. To feed the poor in time of famine.

4. To build a Church.

5. To buy adjoining land to increase the cemetery.

6. To dispose of something undesirable and acquire something else more advantageous.

PART. I, TIT. XIV, LAW II.

This law provides that when alienation is permitted it shall be made only by the Prelates, with the authorization of their Chapters; that lands shall be sold only in default of sufficient personalty to meet the requirements of the case, and that lands given by the Emperor or the King shall never be alienated.

PART. III, TIT. XXIX, LAW VI.

This law, in laying down the rules regulating prescription, provides as follows:

Text.	*Translation.*
"Sagrada, o Santa, o Religiosa cosa, non se puede ganar per tiempo."	"A consecrated, or holy, or religious thing cannot be acquired by lapse of time."

PART. III, TIT. XXIX, LAW XXVI.

This law provides that lands belonging to a Church (but apparently not actually consecrated)

cannot be acquired by prescription in less than forty years; that destructible personal effects can be acquired by prescription in three years; and continues as follows:

Text.	*Translation.*
"Pero las otras que per perteneciessen a la *Eglesia de Roma* tan solamente, non las podria ningun ome ganar por menor tiempo de cient años."	"But the others which belong to the *Church of Rome* exclusively cannot be acquired by any one in less than one hundred years."

The last provision is particularly significant in being an almost literal reproduction of the ancient Roman statute previously quoted providing for a special 100 year limitation applicable to the Church of Rome.

Such in the main continued to be the law of Spain and the rest of Europe throughout the middle ages, certain modifications being made in the way of prohibitions limiting the right to give to the church. These mortmain laws, however, in no way affect the juristic personality of the church or its general right to hold and acquire property in its corporate capacity.

IV.—Analogous Development of English Law.

In England we find the whole modern conception of corporate or artificial personality evolved from the right of the Church or of individual churches to hold property. The oldest written words of the English law are those of King Aethelbert:

"God's property and the church's twelve fold."

The King makes a grant to Saint Andrew,

"and to thy church at Rochester where Justus the bishop presides do I give a portion of my land."

Pollock & Maitland, History of English Law, 2d Ed., Vol. I, p. 499.

The earliest idea is that of the saint as the owner of property. Later the church building and land itself come to be considered in connection with the saint as the owner, and finally we find the conception of the Bishop or Abbot as the corporation sole.

"The case of a bishop is not essentially unlike that of an abbot. True, that the lands of the see are very often from Doomsday Book downward spoken of simply as the lands of the bishop; the fact that they constituted a barony made such language the more natural; none the less they were the lands of his church. And in the bishop's case it is at least necessary to distinguish the man from the bishop. All the abbot's lands are the abbey lands, but a bishop may hold lands and goods which in no wise belong to his see."

"But the idea of the church as the true owner of the episcopal lands made this step the easier for in one of his two capacities the bishop was not owner but merely a rector or *custos*."

Pollock & Maitland, id., p. 506.

We thus find the concept of the church as a corporation worked out by the English canonists

and fully recognized by the ordinary law courts before the end of the fourteenth century.

The English ecclesiastical law was thus practically similar to that of Continental Europe in its recognition of the property rights of the church. As has been appositely said by the most learned historians of the English law:—

> "Blackstone's picture of a nation divided into two parties, 'the bishops and the clergy' on the one side contending for their foreign jurisprudence, 'the nobility and the laity' on the other side adhering 'with equal pertinacity to the old common law' is not true. It is by 'popish clergymen' that our English common law is converted from a rude mass of customs into an articulate system and when the 'popish clergymen' yielding at length to the Pope's commands, no longer sit as the principal justices of the King's court, the creative age of our medieval law is over."
>
> *Pollock & Maitland, id.*, p. 133.

In that erudite and ancient writer Bracton we find the English law stated substantially like that contained in Justinian's great compilation. He tells us:—

> "Res vero sacrae, religiosae, et sanctae in nullius bonis sunt, quod enim divini juris est, id in nullius hominis bonis est, immo in bonis dei hominum censura, etc."

The most modern English law maintains very much the same view as to the title to religious property as that which was entertained by King Aethelbert and his successors. The Privy Council has several times held than an Indian idol may be regarded as a juridical person capable of holding property and that this property is sacred

and inalienable. There is thus nothing peculiar or extraordinary in the claim of the Roman Catholic Church to the unfettered ownership of property dedicated to its use, and this court in sustaining the judgment of the Supreme Court of Porto Rico would be conferring no greater right or privilege upon the Church than the Judicial Committee of the Privy Council has conferred upon a mere Indian idol.

See Maharaja Jagadindra Nath Roy Bahadur *v.* Rani Hemanta Kumari Debi, L. R., 31 Ind. App. 203 at p. 209.

> "There is no doubt that an idol may be regarded as a juridical person capable as such of holding property, although it is only in an ideal sense that property is so held, and probably this is the true legal view when the dedication is of the completest kind known to the law. But there may be religious dedications of a less complete character. * * * But assuming the religious dedication to have been of the strictest character it still remains that the possession and management of the dedicated property belonged to the *Sebait* and this carries with it the right to bring whatever suits are necessary for the protection of the property. Every such right of suit is vested in the *Sebait* not in the idol."

To the same effect see also L. R., 2 Ind. App., 145; L. R., 16 Ind. App., 137, and as to the inalienability of property so dedicated, L. R., 27 Ind. App., 69; 13 Moore's Ind. App., 270.

V.—American Law.

The American law has been no less liberal in recognizing the corporate entity of churches than has the European and English law.

The well known case of Terrett *v.* Taylor (1815) (9 Cranch, p. 43), held that the legislature of Virginia could not authorize any persons to take land formerly granted to the Church of England. Mr. Justice Story, speaking for the court, says (p. 49):

> "Be however the general authority of the legislature as to the subject of religion as it may it will require other arguments to establish the position that at the revolution all the public property acquired by the Episcopal churches under the sanction of the laws became the property of the state. Had the property thus acquired been originally granted by the state or the king, there might have been some color (and it would have been but a color) for such an extraordinary pretension, but the property was in fact and in law generally purchased by the parishioners or acquired by the benefactions of pious donors. The title thereto was indefeasibly vested in the churches or rather in their legal agents. It was not in the power of the crown to seize or assume it nor of the parliament itself to destroy the grants *unless by the exercise of a power the most arbitrary, oppressive and unjust and endured only because it could not be resisted.* * * * Nor are we able to perceive any sound reason why the church lands escheated or devolved upon the state by the revolution any more than the property of any other corporation created by the royal bounty or established by the legislature."

This Court further held that it made no difference whether the Church was a voluntary Society or clothed with corporate powers. The local authorities, precisely as in the case at bar, were restrained from interfering with the Church property or claiming title thereto.

It is the settled law of this court that a dedication to a public or charitable use may exist even where there is no specific corporate entity to take as grantee. Therefore, even if the Church had not been recognized by the Spanish law and the concordats as possessing specific corporate capacity and the treaty and the law of nations had not prohibited interference with its property, nevertheless under the decisions of this court lands dedicated to its use would have belonged irrevocably to it.

Werlein v. *New Orleans,* 177 U. S., 390, 401.

In Beatty *v.* Kurtz (2 Peters, 566), this court held that a certain plot of ground belonged to a German Lutheran Society not incorporated and of which there were no trustees to hold the property, because having been consecrated for a religious purpose, the Lutheran Society might enforce the trust or use to which it had been so dedicated.

The court has thus gone so far as to hold that even where there is no corporate existence or capacity, yet property consecrated to a religious use becomes inalienably dedicated or devoted to that purpose and cannot be reclaimed by the donor, his heirs or successors. The law being so broad, it is indeed an extraordinary contention that the Municipality of Ponce can rightly register as its own property dedicated to and consecrated by the Roman Catholic Church so many years ago that "the memory of man runneth not to the contrary."

VI.—History of the legal status of the Roman Catholic Church under the Spanish Dominion in Porto Rico.

In briefly examining the Spanish law as to the juristic capacity of the church in Porto Rico at the time of the cession we find that it is in no wise anomalous but merely follows the principles of the Roman law which have had such universal acceptance both in the law of continental Europe and in the common law of England.

It is unnecessary to comment upon the close relation which existed between church and state under the old Spanish monarchy and which long antedated the making of the first Concordat or Treaty with the Roman See. There was no clear line of demarkation between civil and ecclesiastical matters, and the Spanish Crown, in temporal matters at least, exercised a very large jurisdiction over the Spanish church. Roman Catholicism has been the official religion of Spain since the time of the Visigoths. One of the main motives for foreign conquest and one to which the Crown devoted especial attention as a sequence to the discovery of the new lands by Columbus and their subjugation by the "Conquistadores" was the Christianizing of the native populations. As far as the Church in Spanish America was concerned, the King of Spain was Supreme Patron. (See Diccionario de la Administracion Espanóla by Alcubilla. Art. Patronato Real de Indias, Vol. 8, p. 662.)

The laws enacted in Spain for the Government of the Indies and promulgated at different periods were compiled by order of Philip IV in 1661 in the "Recopilacion" of the Indies and a subsequent edition was published by Charles II in 1681. This

is the only authentic collection of the ordinances and decrees governing Spanish America prior to the year 1860. (Alcubilla, art. Ultra-Mar., Vol. 9, p. 936.) The first book of this Recompilation treats principally of ecclesiastical laws and matters, church officials and educational institutions.

(Walton, Civil Law in Spain and Spanish America, pp. 523-24.)

In a Royal Decree of 1574, it was declared that the right to patronage of the Indies is alone and undivided, forever reserved to "us and our Royal Crown," and may not be alienated from it, wholly or in part.

Under the papal grants or bulls of Julius II and Alexander XI there were conceded to the Spanish Crown all the tithes of the Indies under the condition of endowing the church and providing the priests with proper support. This right to receive the tithes the King transferred in large part to the Bishops, the churches, the hospitals and other institutions according to a fractional distribution fixed by the Crown. The quality of Patron of the Church in the Indies and the rights and privileges flowing therefrom were among the most important features of the Spanish Crown.

(See Moses, Establishment Spanish Rule in America, pp. 242-43, and Sir Arthur Helps, Conquest of America, Vol. 1, p. 178).

The Church in Spanish America, through this royal patronage, came into possession of considerable properties. The right of the Church to own, maintain and hold such properties was un-

questioned, and the Church continued in undisputed possession of these properties. In the year 1820 the Spanish Revolutionary Government passed certain confiscatory laws as to monasteries and other ecclesiastical foundations, but even these revolutionary enactments left the actual Temples undisturbed.

There was further legislation to the same effect in 1835 and again in 1837, but this legislation does not appear to have ever been extended to the colonies, although it was wrongfully but effectually applied there by the seizure of church properties afterwards agreed to be restored by the Concordats of 1851 and 1859. In any event a reaction toward conservatism soon set in, and after more than twenty-five years of intermittent conflict between Church and State, the Spanish Government and the Papacy concluded the Concordat of March 16, 1851, which had in Spain the force of law and which was promulgated in the Insular possessions (Alcubilla, Art. Concordatos, Vol. 3, p. 94 *et seq.*; Olivart, Tratados Convenias de España).

By the first article of this Concordat it is provided:

> "That the Catholic Apostolic religion, to the exclusion of any other religion whatever, shall continue to be the sole religion of the Spanish nation and will always be preserved in the domains of His Catholic Majesty with all the rights and privileges which it ought to enjoy, according to the law of God and the provisions of its sacred canons."

Article 11 of the Spanish Constitution of 1876 is to the same effect (Alcubilla, Art. Constitucion Politica, Vol. 3, p. 357).

There are numerous provisions in the Concordat fixing the amounts to be paid by the State for the

support of the Church and for the settlement of other causes of difficulty between the Crown and the Roman See, and Art. 41 specifically recognizes the Church's "right of property in everything it now possesses or may hereafter acquire." (Alcubilla, Vol. 3, p. 109.)

In 1859 as a further guaranty of the property rights of the Church an additional Concordat was made between the Spanish Crown and the Roman See. The first article of this, reciting the unfortunate events by reason of which ecclesiastical properties have been wrongfully taken, obligates the Spanish Crown not to sell or aleniate any of these properties without the permission of the Holy See.

The third article is important and peculiarly relevant. It reads as follows:

> "Art. 3. Especially the Government of His Majesty again formally recognizes the full and free right of the Church to acquire, retain and enjoy in full property right and without limitation or reserve all kinds of property and values, renouncing in consequence by this Treaty any disposition contrary hereto and particularly those which may be contained in the law of May 1st, 1855. The properties which in virtue of this right the Church may acquire and possess in future are not to be considered as part of the donation which is assigned to it by the Concordat."

Thus were the difficulties between Church and State incident to the Revolutionary movement adjusted. There were nevertheless again in 1868, during the *régime* of the Provisional Government, certain decrees closing all conventual establishments, etc., but the relations between the Church and the Government were finally restored by King Alfonso XII, who in January, 1875, issued a de-

cree returning to the Church all the property belonging to the clergy which was still in the hands of the Government.

It will be noted that none of these Revolutionary Decrees disturbed actual church edifices, such as the two churches forming the subject matter of this suit, but were directed almost wholly against conventual properties, belonging to the various congregations or monastic orders. The attacks seem to have been directed against the property of the regular clergy and not that of the seculars.

Under the civil law of Spain, the collection of tithes and premices or the first fruit of land and stock was obligatory. First, they were collected by the church but later collected by the Government and turned over to the Church. The levy of such tithes finally disappeared under the Concordat because the Government paid all expenses of worship.

> "Most all churches in Porto Rico have been built with public moneys. It has been shown from quotations of the laws of the Indies that the first buildings devoted to religion were constructed with moneys of the royal treasury; that later some parish churches were built with moneys of the municipalities, as may be inferred from the regulations of September 11, 1858, issued by the governor of Porto Rico, and from the circular of January 5, 1864, also issued by the governor of Porto Rico, which provides the form and manner of preparing municipal budgets, and in which it is stated that such funds as are appropriated for the building of churches shall be considered permanent—that is to say, that they shall be carried from year to year. It is only in very few instances connected with the building of some very small churches, as in the

case of the church of Cataño, Bayamon, that such buildings have been erected with moneys of the congregation.

* * * * * *

Pope Alexander the VI, by a bull of December 16, 1501, granted the Kings of Spain the right to collect the tithes and premices of all churches in America, the Government assuming the obligation of paying all expenses of worship. As can be seen by the laws hereinbefore cited, the Kings complied with this religious obligation. Moreover, the King, on May 8, 1512, entered into an agreement with the bishops of America, granting them the right to invest the proceeds of tithes and premices in their respective dioceses in such way as they (the bishops) may consider most convenient for the maintenance of worship.

* * * * * *

Revenues derived from tithes were insufficient at first to cover the expenses of the church in Porto Rico, and therefore the Government again took charge of the collection and paid for the expenses of worship in the cathedral.

By royal "cedula" of August 10, 1815, the collection of tithes was dispensed with, and one-half of the revenues derived from the territorial tax was appropriated for the expenses of worship. Later on the cathedral and the parish of San German were given the right to collect premices. All other parishes in the island were supplied by the respective municipalities.

The maintenance of worship in Porto Rico was finally provided for by royal "cedula" of April 20, 1858, as follows: (1) The premices collected by the cathedral and the parish of San German shall be collected by the royal

treasury; (2) the cathedral shall receive no other emoluments except as provided for herein; (3) the bishop shall be paid a salary of 12,000 pesos per annum; (4) all other ecclesiastical officers of the cathedral are to be paid a fixed salary, and in addition the sum of 3,000 pesos for building (service of worship) and 4,000 pesos for music; (5) no parochial fees shall be charged and no tax shall be paid by the municipal councils to their respective parishes; (6) a tax to the amount of 100,000 pesos shall be levied and collected equitably and paid for by the towns for the expenses of parishes; (7) the number of parishes is fixed and divided into three classes. A salary of 1,500 pesos per annum shall be paid to priests of parishes of the first class, 1,000 pesos to priests of parishes of the second class, and 600 pesos to those of the third class. (8) Provision is also made for the payment of salaries to other parish officers; (9) an allowance of 300 pesos is made for building expenses of parishes of the first class, 250 pesos for those of the second class, and 200 pesos for those of the third class; (10) provision is made for an annual appropriation of 12,000 pesos for repairs and construction of churches and for the purchase of ornaments and sacred vases; (11) a separate appropriation shall be made for the seminary."

(Senate Doc., 57th Cong., 2nd Sess., Report No. 2977.)

In accordance with the terms of the Concordat, down to the occupation of Porto Rico by the American troops in August, 1898, amounts were regularly appropriated by the Spanish Government for the expenses of worship in Spain, Cuba, Porto Rico and the Philippines. From July, 1895, to July, 1896, the Budget of Porto Rico shows

190,647 pesteas for expenses of worship, chaplain, supplies, etc.

(Same Document, p. 33.)

At the date of the American military occupation, neither the State nor the Municipalities directly or indirectly disputed or questioned the legitimate ownership and possession by the Church of the property occupied by her, including Temples, parochial houses, seminaries and ecclesiastical buildings of every description. It is only since the occupation that some of the Ayuntamientos have evinced a desire to deprive the Church of her Temples under the pretext that they were built with Municipal funds.

At the time of the American occupation, the Catholic church was the only church in the Island. In the Report of Brig.-General George W. Davis, on Civil Affairs in Porto Rico, War Dept. Report, 1899, Vol. I, Part 6, p. 498, it is said:

> "In the Insular Budget for several years past there has been carried an item of expenditure for the support of the Catholic clergy. The total for each of the fiscal years 1897-98, 1898-99 was stated at 163,610 pesos. Allowance for the Priests continued at this rate until October 18, 1898, when the sovereignty of Porto Rico was transferred to the United States. Since that date no further payments have been made, notwithstanding the claims for a continuance by the local representatives of the Catholic Church."

In 1900 Governor Allen (First Annual Report, Senate Document No. 79, 57th Cong., 1st sess., p. 54), said:

> "Out of the 953,243 inhabitants of Porto Rico, there are nearly 950,000 Catholics and

there is a Catholic Church in every town and village and in the larger towns and cities several; in the City of San Juan there are eight, including the Cathedral. Nearly all these are well built structures, occupying central locations and are ornaments to the towns where situated. There are many Parochial schools and other church institutions, belonging to the Catholics. * * * None of the public money is now used in the salaries of clergymen or otherwise in the support of religion. All such expenses are defrayed as in the United States by voluntary contribution of the congregation and friends on the Continent. The controversies formerly existing between the Municipal and the Church authorities concerning the ownership of church property have not yet been settled."

In the First Annual Register of Porto Rico, pp. 152 to 155, appears an enumeration of the various properties owned by churches and Religious Communities in Porto Rico.

From this brief review it is quite evident that from the earliest settlements in Porto Rico, the law recognized the juristic personality of the church and its right to acquire property. This was the status at the moment of the annexation and by reason of the Treaty as well as under the rules of International Law prevailing among civilized nations, this property is inviolable.

The corporate existence of the Roman Catholic Church, as well as the position occupied by the Papacy, have always been recognized by the Government of the United States.

At one time the United States maintained diplomatic relations with the Papal States, which con-

tinued up to the time of the loss of the temporal power of the Papacy.

Moore's Digest of Int. Law, Vol. 1, pp. 130-131.

The Holy See still occupies a recognized position in International Law of which the Courts must take judicial notice.

> "The Pope, though deprived of the territorial dominion which he formerly enjoyed, holds, as sovereign pontiff and head of the Roman Catholic Church, an exceptional position. Though, in default of territory, he is not a temporal sovereign, he is in many respects treated as such. He has the right of active and passive legation, and his envoys of the first class, his apostolic nuncios, are specially privileged. Nevertheless he does not make war, and the conventions which he concludes with states are not called treaties, but Concordats. His relations with the Kingdom of Italy are governed, unilaterally, by the Italian law of May 13, 1871, called 'the law of guarantees,' against which Pius IX and Leo XIII have not ceased to protest."

Moore, Do., Vol. 1, p. 39.

After the cession of Louisiana by France to the United States certain questions came up as to the title to lands granted by the King of Spain to the Roman Catholic Church. The opinion of the Attorney-General, the Hon. Wm. Wirt, having been asked thereon, he wrote as follows:

> "There can be no doubt of the power of the King of Spain to grant lands in Florida while the province was his; nor of the capacity of the Roman Catholic Church to take by

grant. Our treaty with Spain recognizes and ratifies all such grants made prior to a certain day."

(I Opinions Atty.-Gen., 563.)

The same rule is applied in International Law.

See Mexican "Pious Fund" Case.
Moore's Dig. of Int. Law, Vol. VII, pp. 58, 59.
Moore's Int. Arbitration, Vol. II, p. 1350.

The proposition, therefore, that the Church had no corporate or jural personality is completely answered,

First, by an examination of the law and history of the Roman Empire, of Spain and of Porto Rico down to the time of the cession, and

Second, by the recognition accorded to it as an ecclesiastical body by the Treaty of Paris and by the law of nations.

A.—The Porto Rican Corporation Laws.

Appellant does not cite the particular laws of Porto Rico, which he claims should have been complied with before the Roman Catholic Church could have any corporate existence or right to sue. We presume, however, that he refers to the various laws of Porto Rico relating to the formation and regulation of businesss corporations. It is plain that none of these laws can have the slightest application to the Church and never were so intended.

If the People of Porto Rico had passed a law, such as is common in many of the States of the

Union, by which the manner of holding properties by ecclesiastical bodies through trustees or otherwise or the method in which such body should be represented before the Courts are prescribed, a different question might arise. No such question here arises, and it is sufficient to say that the Spanish law from the earliest moment of the settlement of the island to the present time has recognized the corporate existence of the Catholic Church. Under these circumstances its right to sue to maintain its property rights, granted by the local law and by the United States Constitutions, as well as by the solemn treaty under which the Island was acquired, cannot be doubted. At the very least, and even assuming that for centuries the Church had not been recognized as a body of equal importance with the State in Porto Rico, but that it was a merely de facto organization or association holding property, it would nevertheless have sufficient standing to maintain this suit (Am. & Eng. Ency. Law, Religious Societies, Vol. 24, p. 331).

An examination of the corporation law in Porto Rico will show the utter futility of the contention that the Church should have complied with the requirements of that law in order to possess corporate rights and to be able to invoke the aid of the law in maintaining its property rights. There is no pretence in the Corporation Law of regulating the manner in which the Roman Catholic Church or any other Religious Corporation or body shall hold its property. No question of conformity to any law of "Societés Cultuelles" or of "Associations" or religious societies can here arise since there are no statutes relating to any such genus of legal or artificial persons.

The general law as to corporations is found in Title I and II of the Civil Code now in force.

> "Section 27. The following are artificial persons:
>
> (1) Corporations, associations and institutions of public interest, having artificial personality recognized by law.
>
> The personality of such bodies shall commence from the moment of their establishment in accordance with law.
>
> (2) Private associations, whether civil, commercial or industrial to which the law grants legal personality.
>
> "Section 29. The civil status of corporations shall be governed by the laws which create or recognize them, that of associations by their by-laws, and that of institutions by the rules of their establishment duly approved by administrative action when such requisite be necessary.
>
> "Section 30. Artificial persons may acquire and possess property of all kinds and also contract obligations and institute civil and criminal actions in accordance with the laws and regulation of their establishment."

Were any such statutory authorization necessary these general provisions would seem to accord ample recognition of the right of the church to hold property.

Appellant argues that the church has not complied with the Foreign Corporation Law as to the doing of business. Assuming the law of Foreign Corporations to be applicable to the oldest institution in Porto Rico (or in Europe generally), there is something which savors of the grotesque in the claim that the Church is "outlaw" because it has not complied with the following provision of the Civil Code of Porto Rico, Title II, Chap. II.:

"Section 65. All corporations or joint stock companies, organized under the laws of any State, or of the United States, or of any foreign government, shall before doing business within this island, file in the office of the Secretary, a duly authenticated copy of their charters or articles of incorporation, and also a statement verified by the oath of the President and Secretary of said corporation, and attested by the majority of its board of directors showing

(1) The name of such corporation and the location of its principal office or place of business, without this island; and if it is to have any place of business or principal office within this island, the location thereof.

(2) The amount of its capital stock.

(3) The amount of its capital stock actually paid in, in money.

(4) The amount of its capital stock paid in, in any other way, and in what." etc., etc.

The complete inapplicability of the foreign corporation law thus appears so clearly upon its face as to dispense with the need of further comment.

A glance at the Domestic Corporation law demonstrates its equal inapplicability.

It is needless to cite its terms. They are found in the Civil Code, Title II, Chap. I and have reference solely to business or commercial corporations. No religious, eleemosynary or charitable corporation can fall within its purview. Stock, stockholders, capital, surplus, officers, directors the doing of business are the basic elements of this statute.

Some special laws as to Public Service, banking and other corporations exist, all of which are wholly without relevancy here.

B.—The Solution of Similar Questions in Cuba and the Philippines.

The properties of the Church in Cuba and the Philippines at the time of the ratification of the Treaty were far more considerable than those in Porto Rico. The controversies or questions arising as to those properties have been quite generally adjusted in both Cuba and the Philippines without recourse to the Courts. In Cuba a Commission was appointed to consider the whole question and its report contains much interesting and pertinent information. It begins with the fundamental proposition that:

> "The Church, as a juridical person, has held and holds the right to acquire, possess, or transfer all kinds of property."
>
> Sen. Doc. No. 2977, 57th Cong., 2d Sess.

On this admitted basis was concluded a satisfactory adjustment of this difficult problem incident to the transfer of sovereignty from a *régime* of union of Church and State to the American system of complete separation.

Even greater difficulties were settled in the Philippines, and the American Government never suggested that the Church was without juristic capacity to possess or protect property rights. The suggestion that it did not possess a license from the local authorities "to do business" was never adumbrated.

Whether these ecclesiastical properties originally came from the State or any subdivision thereof, they were donated to, at once became and have ever since remained the property and in the peaceful possession of the Roman Catholic Church.

In the Philippines a judicial answer has been given to the question of the corporate capacity of the Church and its right to hold the property which it had acquired under the Spanish regime. The Supreme Court of the Philippine Islands has recently treated these questions in an erudite and interesting opinion which for the convenience of the Court we print as an appendix to this brief. The suggestion, made there as here that the Church was not a legal person entitled to maintain its property rights in the courts, the Supreme Court answered in this language:

> "(4) It is suggested by the appellant that the Roman Catholic Church has no legal personality in the Philippine Islands. This suggestion made with reference to an institution which antedates by almost a thousand years any other personality in Europe, and which existed 'when Grecian eloquence still flourished in Antioch, and when idols were still worshipped in the temple of Mecca', does not require serious consideration."
>
> (Barlin *v.* Ramirez, Vol. VII, Philippine Reports, pp. 57-58).

POINT III.

Upon the facts stated in the petition the Church has a good title to the property in question.

It is urged "that the Roman Catholic Church does not state facts sufficient to constitute any

cause of action and that it admits that the property in question was constructed out of funds of the Municipality of Ponce, Porto Rico, and the legal title now rests in the Municipality of Ponce, Porto Rico." (Appellant's Brief, p. 23.)

The contention seems to us to have been sufficiently answered in the preceding point. Whether the property originally came from the Crown or the local government is immaterial since it had been for centuries recognized as the property of the Church. Because the Spanish Crown or one of its Municipal agencies chose to donate churches some years or centuries ago, it scarcely follows that it can now be claimed that the gift is revocable, and that the Municipality may now expropriate the Church and convert the property to any purpose it may desire. The laws of the Indies themselves provided that the Parish churches should be built from funds derived, one-third from the crown and two-thirds from the localities.

As the present Secretary of War has said in referring to the Philippines:

> "The transfer of sovereignty and all governmental property rights and interests from the Crown of Spain to the United States in the Philippine Islands contained in the Treaty of Paris was a transfer from a government between which and the Church of Rome there had been in those islands the closest association in property, religion, and politics, to a government which by the law of its being is absolutely prevented from having such associations with any church. To make the transfer effectual, and at the same time just, it is obvious that the proper line of division must be drawn between what were really civil property interests of the Crown of Spain and what were religious trusts of the Catholic Church,

and that all union of civil and clerical agencies for performance of political functions must end."

(Report of the Secretary of War, 1902, p. 237.)

The proposition that because the church may have originally been built by the people of the municipalities hence the title is in the municipality has no basis in law or history. This Court has said:

"By the Spanish law, whatever was given to the service of God, became incapable of private ownership, being held by the clergy as guardians or trustees; * * * when property was given for a particular object, as a church, a hospital, a convent or a community, etc., and the object failed, the property did not revert to the donor, or his heirs, but devolved to the crown, the church or other commune or community, etc."

Mormon Church *v.* U. S., 136 U. S., 1, 53.

In order to appreciate the questions relating to the property right of the church, a very important point must be remembered, namely, that all the public funds employed in church buildings and other property were appropriated for that purpose without any reservation or restriction whatever, being approved according to law by the representatives of the nation in the Cortes, or by those of the towns in the common councils. Therefore said application of funds thus appropriated and voted by the legitimate mandataries of the nation or of the municipalities constituted,

from the standpoint of law as of justice, a perfect, irrevocable gift.

Moreover, it should be borne in mind that all the appropriations of public funds in behalf of the Church were but a just compensation to which the Church was entitled by virtue of her renunciation of the tithes and first fruits in favor of the state and municipalities.

POINT IV.

The procedural objections are without merit.

Certain objections of a purely procedural nature, made by the appellant, will now be briefly examined. It must first be observed that this suit was begun by the filing of the complaint on the 8th day of June, 1904, and was admitted by the Court, and service upon the defendant ordered on June 24th, 1904, (Rec., p. 10). The present Code of Civil Procedure of Porto Rico did not go into effect until July 1, 1904 (Sec. 362), and the form of the complaint was therefore subject to the requirements of the Law of Civil Procedure in force prior to July 1, 1904. (See Translation published by the War Dept., January, 1901).

The appellant's procedural objections may be classified as follows:

1. Misjoinder of causes of action (3rd ground of demurrer, Rec., p. 11, fol. 18).

2. Insufficiency and irregularity of form (5th, 7th, 8th and 9th grounds of demurrer, Rec., p. 12, fol. 19).

3. Bar of Statute of Limitations (6th ground of demurrer, Rec., p. 12, fol. 19).

4. Lack of authority to bring suit in name of Church (10th and 11th grounds of demurrer, Rec., p. 12, fol. 20).

These objections will be considered *seriatim.*

1.—*There is no misjoinder of causes of action.*

Art. 153 of the Law of Civil Procedure is as *follows:*

"The plaintiff may consolidate in his complaint as many causes of action as he may have against the defendant, *even though they proceed from different titles,* provided that said actions are not incompatible with each other."

Art. 154 enumerates the cases in which actions are incompatible, viz: when they mutually exclude each other, when the judge who is to take cognizance of the main action is incompetent to take cognizance of the consolidated action, and when the causes of action require different forms of procedure.

None of these objections applies in the case at bar.

The present Code of Civil Procedure (Sec. 104), also allows the joinder of separate causes of action "to recover specific real property." There is no requirement that the different causes of action should all apply to the same parcel. Under a very similar statute in New York (Code Civ. Proc., §484, Subd. 5), it is the practice to join causes of action for different parcels (Overbagh *vs.* Oathout, 90 Hun, 506).

The two causes of action rest upon the same

legal ground, *i. e.*, the rights accruing to the [illegible] parties are the same; the place of trial is the same; the adverse claim, if any, of the defendant seems to rest on the same grounds; and there is no reason in law or logic why either party should be subjected to the expense and trouble of a multiplicity of actions.

The Missouri decision cited by the appellant merely held that claims for legal and equitable relief could be united and the question of separate parcels was not involved.

2.—*The form of the complaint is regular and sufficient.*

The action appears to be in the nature of a "declaratory action of greater import" (Law of Civil Procedure, Art. 482). In such cases it is required that the complaint "shall succinctly and in numerical order state the facts and the principles of law upon which it is based, and the claim shall be clearly and precisely fixed, as well as the persons against whom the complaint is directed."

Every one of these requirements is strictly and literally complied with. The facts are stated with most minute particularity and the statement of the "Legal Points," or legal grounds of the action, was necessary and proper.

Moreover, upon demurrer, every reasonable intendment is to be made in favor of the pleading demurred to (Swift *vs.* U. S., 196 U. S., at 395). This rule is especially appropriate in cases in which the pleading is framed under a wholly different system of legal procedure from that generally prevailing in this country. Where the

Court familiar with such procedure has held the pleading [illegible], less manifestly erroneous.

3.—There is no bar of any Statute of Limitations.

The act under consideration did not limit the right of the Church to begin proceedings thereunder to three months from its approval, but merely directed the Attorney General of Porto Rico to begin proceedings on behalf of the Insular Government if the Church did not begin them herself within that time. Moreover, this provision applied only to controversies between the Church and the People of Porto Rico, not to controversies between the Church and the Municipalities.

In any event the suit *was* commenced within three months from the approval of the Act, which was on March 10, 1904 (Applt's Brief, p. 3). On June 8, 1904, the complaint was filed (Rec., fol. 16). This constituted the commencement of the suit under Art. 523 of the Law of Civil Procedure, which provides that "a declaratory action shall commence by the filing of a complaint." Sec. 38 of the present Code of Civil Procedure also provides that "an action is commenced within the meaning of this Title, when the complaint is filed." "This Title" contains the provisions concerning the limitation of actions. There is nothing strange about this rule. The filing of a bill has constituted the commencement of a suit in equity since the first development of Chancery practice.

4. *The authority of the Bishop to bring the suit in the name and on behalf of the Church is unquestionable.*

The objection of lack of authority to bring the suit would not, in any event, be a proper ground of demurrer, and the Appellant evidently recognizes this (Applt's Brief, p. 26). Moreover, there was, in fact, no lack of authority.

Each Bishop is the qualified representative of the Roman Catholic Church in his Diocese, and is authorized to assert its rights of property therein. This is a matter of public knowledge of which the Court will take judicial notice.

See also Arts. 4 and 7 of Concordat of 1859, and Law of Dec. 6, 1861, Alcubilla, Vol. 3, pp. 110, 111, 159.

It is thus seen that all of the procedural objections are wholly without weight or merit.

Conclusion.

The position of the appellee herein may be briefly summarized as follows:

First.—The Legislative Assembly of Porto Rico had the power to confer jurisdiction on the Supreme Court of the Island of this special class of controversies. Such legislation was not contrary to the Constitution and was in conformity with the power conferred by Congress upon the Legislative Assembly to regulate the jurisdiction of the Courts.

Second.—The Roman Catholic Church has been recognized as possessing legal personality by the Treaty of Paris and its property rights solemnly safeguarded. In so doing the Treaty has merely followed the recognized rule of International Law which would have protected the property of the Church in Porto Rico subsequent to the cession. This juristic personality and the Church's ownership of property had been recognized in the most formal way by the Concordats between Spain and the Papacy and by the Spanish Laws from the beginning of settlements in the Indies. Such recognition has also been accorded the Church by all systems of European law from the Fourth Century of the Christian Era.

Third.—The fact that the Municipality may have furnished some of the funds for building or repairing the churches cannot affect the title of the Roman Catholic Church to whom such funds were thus irrevocably donated and by whom these Temples were erected and dedicated to religious uses.

For these reasons the judgment of the Supreme Court of Porto Rico should be affirmed.

All of which is respectfully submitted.

Dated New York, January 9th, 1908.

PAUL FULLER,
FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
Of Counsel for Appellee,
2 Rector St.,
New York City, N. Y.

APPENDIX.

(No. 2832, November 24, 1906).

Rev. JORGE BARLIN, in his capacity as apostolic administrator of this vacant bishopric and legal representative of the general interests of the Roman Catholic Apostolic Church in the diocese of Nueva Caceres, plaintiff and appellee, *vs.* P. VICENTE RAMIREZ, ex-rector of the Roman Catholic Apostolic Parochial Church of Lagonoy, and THE MUNICIPALITY OF LAGONOY, defendants and appellants.

1. CHURCH BUILDINGS: POSSESSION: ADMINISTRATION: ESTOPPEL.—In an action brought by the Roman Catholic Church to recover a church building, against a priest whom it has put in possession thereof to administer the same, the latter is estopped from alleging ownership at the time he took possession either in himself or in a third person.

2. ID.; ID.; EJECTMENT: RECOVERY OF POSSESSION. —Bishop of Cebu *vs.* MANGARON (6 Phil. Rep., 286), followed to the point that a person in possession of real estate who has been deprived of such possession can recover it unless the defendants can show a better right thereto.

3. ID. TRANSFER TO MUNICIPALTIES BY GOVERNMENT.—The Government of the Philippine Islands has never undertaken to transfer to the municipalities the ownership or right of possession of the churches therein.

4. ID. OWNERSHIP: POSSESSION.—Prior to the cession of the Philippines to the United States

the King of Spain was not the owner of the consecrated churches therein and had no right to the possession thereof. The exclusive right to such possession was in the Roman Catholic Church and such right has continued since such cession and now exists.

5. ROMAN CATHOLIC CHURCH.—The Roman Catholic Church is a juridical person in the Philippine Islands.

Per CARSON, J., concurring in the result:

6. CHURCH BUILDINGS: OWNERSHIP.—The legal title to the State-constructed churches in the Philippine Islands is in the United States.

7. ID: USUFRUCT.—The beneficial ownership of these churches is in the people of the Philippine Islands.

8. ID: POSSESSION AND CONTROL.—The right to the possession and control of these churches is in the Roman Catholic Church so long as it continues to use them for the purposes for which they were dedicated.

APPEAL from a judgment of the Court of First Instance of Ambos Camarines.

The facts are stated in the opinion of the Court.

MANLY & GALLUP, for appellants.

LEONCIO IMPERIAL and CHICOTE, MIRANDA & SIERRA, for appellee.

WILLARD, J.:

There had been priests of the Roman Catholic Church in the pueblo of Lagonoy, in the Province

of Ambos Camarines, since 1839. On the 13th of January, 1869, the church and convent were burned. They were rebuilt between 1870 and 1873. There was evidence that this was done by the order of the provincial governor. The labor necessary for this reconstruction was performed by the people of the pueblo under the direction of the cabezas de barangay. Under the law then in force, each man in the pueblo was required to work for the government, without compensation, for forty days every year. The time spent in the reconstruction of these buildings was counted as a part of the forty days. The material necessary was bought and paid for in part by the parish priest from the funds of the church and in part was donated by certain individuals of the pueblo. After the completion of the church it was always administered, until November 14, 1902, by a priest of the Roman Catholic Communion and all the people of the pueblo professed that faith, and belonged to that church.

The defendant, Ramirez, having been appointed by the plaintiff parish priest, took possession of the church on the 5th of July, 1901. He administered it as such under the orders of his superiors until the 14th day of November, 1902. His successor having been then appointed, the latter made a demand on this defendant for the delivery to him of the church, convent, and cemetery, and the sacred ornaments, books, jewels, money, and other property of the church. The defendant, by a written document of that date, refused to make such delivery. That document is as follows:

"At 7 o'clock last night I received through Father Agripino Pisino your respected order of the 12th instant, wherein I am advised of the ap-

pointment of Father Pisino as acting parish priest of this town, and directed to turn over to him this parish and to report to you at the vicarage. In reply thereto, I have the honor to inform you that the town of Lagonoy, in conjunction with the parish priest thereof, has seen fit to sever connection with the Pope at Rome and his representatives in these Islands, and to join the Filipino Church, the head of which is at Manila. This resolution of the people was reduced to writing and triplicate copies made, of which I beg to inclose a copy herewith.

"For this reason I regret to inform you that I am unable to obey your said order by delivering to Father Agripino Pisino the parish property of Lagonoy, which, as I understand it, is now outside of the control of the Pope and his representatives in these Islands. May God guard you for many years.

"Lagonoy, November 14, 1902.

(Signed) "VICENTE RAMIREZ.

"RT. REV. VICAR OF THIS DISTRICT."

The document, a copy of which is referred to in this letter, is as follows:

LAGONOY, November 9, 1902.

"The municipality of this town and some of its most prominent citizens having learned through the papers from the capital of these Islands of the constitution of the Filipino National Church, separate from the control of the Pope at Rome by reason of the fact that the latter has refused to

either recognize or grant the rights to the Filipino clergy which have many times been urged, and it appearing to us that the reasons advanced why such offices should be given to the Filipino clergy are evidently well-founded, we have deemed it advisable to consult with the parish priest of this town as to whether it would be advantageous to join the said Filipino Church and to separate from the control of the Pope, as long as he continues to ignore the rights of the said Filipino clergy, under the conditions that there will be no change in the articles of faith, and that the sacraments and other dogmas will be recognized and particularly that of the immaculate conception of the mother of our Lord. But the moment the Pope at Rome recognizes and grants the rights heretofore denied to the Filipino clergy we will return to his control. In view of this, and subject to this condition, the reverend parish priest, together with the people of the town, unanimously join in declaring that from this date they separate themselves from the obedience and control of the Pope and join the Filipino National Church. This assembly and the reverend parish priest have acordingly adopted this resolution written in triplicate, and resolved to send a copy thereof to the civil government of this province for its information, and do sign the same below. Vicente Ramirez, Francisco Israel, Ambrosio Bocon, Florentino Reiloso, Macario P. Ledesma, Cecilio Obias, Balbino Imperial, Juan Presenada, Fernando Deudor, Mauricio Torres, Adriano Sebater."

At the meeting at which the resolution spoken of in this document was adopted, there were present about 100 persons of the pueblo. There is tes-

timony in the case that the population of the pueblo was at that time 9,000, and that all but 20 of the inhabitants were satisfied with the action there taken. Although it is of no importance in the case, we are inclined to think that the testimony to this effect merely means that about 100 of the principal men of the town were in favor of the resolution and about 20 of such principal men were opposed to it. After the 14th of November the defendant, Ramirez, continued in the possession of the church and other property, and administered the same under the directions of his superior, the Obispo Maximo of the Independent Filipino Church. The rites and ceremonies and the manner of worship were the same after the 14th day of November as they were before, but the relations between the Roman Catholic Church and the defendant had been entirely severed.

In January, 1904, the plaintiff brought this action against the defendant, Ramirez, alleging in his amended complaint that the Roman Catholic Church was the owner of the church building, the convent, cemetery, the books, money, and other property belonging thereto, and asking that it be restored to the possession thereof, and that the defendant render an account of the property which he had received and which was retained by him, and for other relief.

The answer of the defendant, Ramirez, in addition to a general denial of the allegations of the complaint, admitted that he was in the possession and administration of the property described therein, with the authority of the municipality of Lagonoy and of the inhabitants of the same, who were the lawful owners of the said property. After this answer had been presented, and on the 1st day of November, 1904, the municipality of

Lagonoy filed a petition asking that it be allowed to intervene in the case and join with the defendant Ramirez, as a defendant threein. This petition having been granted, the municipality on the 1st day of December filed an answer in which it alleged that the defendant Ramirez was in possession of the property described in the complaint under the authority and with the consent of the municipality of Lagonoy, and that such municipality was the owner thereof.

Plaintiff answered this complaint, or answer in intervention, and the case was tried and final judgment entered therein in favor of the plaintiff and against the defendants. The defendants then brought the case here by a bill of exceptions.

That the person in the actual possession of the church and other property described in the complaint is the defendant Ramirez is plainly established by the evidence. It does not appear that the municipality as a corporate body ever took any action in refernce to this matter until they presented their petition for intervention in this case. In fact, the witnesses for the defense, when they speak of the ownership of the buildings, say they are owned by the people of the pueblo, and one witness, the president, said that the municipality as a corporation had nothing whatever to do with the matter. That the resolution adopted on the 14th of November, and which has been quoted above, was not the action of the municipality, as such, is apparent from an inspection thereof.

The witnesses for the defense speak of a delivery of the church by the people of the pueblo to the defendant, Ramirez, but there is no evidence in the case of any such delivery. Their testimony in regard to the delivery always refers to the action taken on the 14th of November, a record of

which appears in the document above quoted. It is apparent that the action then taken consisted simply in separating themselves from the Roman Catholic Church, and nothing is said therein in reference to the material property then in possession of the defendant Ramirez.

There are several grounds upon which this judgment must be affirmed:

(1) As to the defendant Ramirez, it appears that he took possession of the property as the servant or agent of the plaintiff. The only right which he had to the possession at the time he took it was the right which was given to him by the plaintiff, and he took possession under the agreement to return that possession whenever it should be demanded of him. Under such circumstances he will not be allowed, when the return of such possession is demanded of him by the plaintiff, to say that the plaintiff is not the owner of the property, and is not entitled to have it delivered back to him. The principle of law that a tenant cannot deny his landlord's title, which is found in section 333, paragraph 2, of the Code of Civil Procedure, and also in the Spanish law, is applicable to a case of this kind. An answer of the defendant Ramirez, in which he alleged that he himself was the owner of the property at the time he received it from the plaintiff, or in which he alleged that the pueblo was the owner of the property at that time, would constitute no defense. There is no claim made by him that since the delivery of the possession of the property to him by the plaintiff he has acquired the title thereto by other means, nor does he in his own behalf make any claim whatever either to the property or to the possession thereof.

(2) The municipality of Lagonoy, in its answer, claims as such, to be the owner of the property. As we have said before, the evidence shows that it never was in the physical possession of the property. But waiving this point and assuming that the possession of Ramirez, which he alleges in his answer is the possession of the municipality, gives the municipality the rights of a possessor, the question still arises, Who has the better right to the present possession of the property? The plaintiff, in 1902, had been in the lawful possession thereof for more than thirty years and during all that time its possession had never been questioned or disturbed. That possession has been taken away from it and it has the right now to recover the possession from the persons who have so deprived it of such possession, unless the latter can show that they have a better right thereto. This was the proposition which was discussed and settled in the case of the Bishop of Cebu *vs.* Mangaron, No. 1748, decided June 1, 1906. That decision holds that as against one who has been in possession for the length of time the plaintiff has been in possession, and who has been deprived of his possession, and who can not produce any written evidence of title, the mere fact that the defendant is in possession does not entitle the defendant to retain that possession. In order that he may continue in possession, he must show a better right thereto.

The evidence in this case does not show that the municipality has, as such, any right whatever in the property in question. It has produced no evidence of ownership. Its claim of ownership is rested in its brief in this court upon the following propositions: That the property in question be-

longed prior to the treaty of Paris to the Spanish Government; that by the treaty of Paris the ownership thereof passed to the Government of the United States; that by section 12 of the act of Congress of July 1, 1902, such property was transferred to the Government of the Philippine Islands, and that by the circular of that Government, dated November 11, 1902, the ownership and the right to the possession of this property passed to the municipality of Lagonoy. If, for the purposes of the argument, we should admit that the other propositions are true, there is no evidence whatever to support the last proposition, namely, that the Government of the Philippine Islands has transferred the ownership of this church to the municipality of Laganoy. We have found no circular of the date above referred to. The one of February 10, 1903, which is probably the one intended, contains nothing that indicates any such transfer. As to the municipality of Lagonoy, therefore, it is very clear that it has neither title, ownership, nor right of possession.

(3) We have said that it would have no such title or ownership even admitting that the Spanish Government was the owner of the property and that it passed by the treaty of Paris to the American Government. But this assumption is not true. As a matter of law, the Spanish Government at the time the treaty of peace was signed, was not the owner of this property, nor of any other property like it, situated in the Philippine Islands.

It does not admit of doubt that from the earliest times the parish churches in the Philippine Islands were built by the Spanish Government. Law 2, title 2, book 1, of the Compilation of the Laws of the Indies is, in part, as follows:

"Having erected all the churches, cathedrals, and parish houses of the Spaniards and natives of our Indian possessions from their discovery at the cost and expense of our royal treasury, and applied for their service and maintenance the part of the tithes belonging to us by apostolic concession according to the division we have made."

Law 3 of the same title relates to the construction of parochial churches such as the one in question. That law is as follows:

"The parish churches which may be erected in Spanish towns shall be of durable and decent construction. Their cost shall be divided and paid in three parts: One by our royal treasury, another by the residents and Indian encomenderos of the place where such churches are constructed, and the other part by the Indians who abode there; and if within the limits, of a city, village or place there should be any Indians incorporated to our royal crown, we command that for our part there be contributed the same amount as the residents and encomenderos, respectively, contribute; and the residents who have no Indians shall also contribute for this purpose in accordance with their stations and wealth, and that which is so given shall be deducted from the share the Indians should pay."

Law 11 of the same title is as follows:

"We command that the part of the tithes which belongs to the fund for the erection of churches shall be given to their superintendents to be expended for those things necessary for these churches with the advice of the prelates and officials, and by their warrants, and not other-

wise. And we request and charge the archbishops and bishops not to interfere in the collection and disbursement thereof, but to guard these structures."

Law 4, title 3, book 6, is as follows:

"In all settlements, even though the Indians are few, there shall be erected a church where mass can be decently held, and it shall have a door with a key, notwithstanding the fact that it be subject to or separate from a parish."

Not only were all the parish churches in the Philippines erected by the King and under his direction, but it was made unlawful to erect a church without the license of the King. This provision is contained in Law 2, title 6, book 1, which is as follows:

"Whereas, it is our intention to erect, institute, found, and maintain all cathedrals, parish churches, monasteries, votive hospitals, churches, and religious and pious establishments where they are necessary for the teaching, propagation, and preaching of the doctrine of our sacred Roman Catholic faith, and to aid to this effect, with our royal treasury whenever possible, and to receive information of such places where they should be founded and are necessary, and the ecclesiastical patronage of all our Indies belonging to us:

"We command that the shall not be erected, instituted, founded or maintained any cathedral, parish, church, monastery, hospital, or votive churches, or other pious or religious establishment without our express permission as is provided in Law 1, title 2, and Law 1, title 3, of this book, notwithstanding any permission heretofore given by

our viceroy or other minister, which in this respect we revoke and make null, void and of no effect."

By agreement at an early date between the Pope and the Crown of Spain, all tithes in the Indies were given by the former to the latter and the disposition made by the King of the fund thus created is indicated by Law 1, title 16, book 1, which is as follows:

"Whereas, the eccelesiastical tithes from the Indies belong to us by apostolic concessions of the supreme pontiffs, we command the officials of our royal treasury of those provinces to collect and cause to be collected all tithes due and to become due from the crops and flocks of the residents in the manner in which it has been the custom to pay the same, and from these tithes the churches shall be provided with competent persons of good character to serve them and with all ornaments and things which may be necessary for divine worship, to the end that these churches may be well served and equipped, and we shall be informed of the provisions made, it pertaining to the worship of God, our Lord; this order shall be observed where the contrary has not already been directed by us in connection with the erection of churches."

That the condition of things existing by virtue of the Laws of the Indies was continued to the present time is indicated by the royal order of the 31st of January, 1856, and by the royal order of the 13th of August, 1876, both relating to the construction and repair of churches, there being authority for saying that the latter order was in force in the Philippines.

This church and other churches similarly situated in the Philippines, having been erected by the Spanish Government, and under its direction, the next question to be considered is, to whom did these churches belong?

Title 28 of the third partida is devoted to the ownership of things and, after discussing what can be called public property and what can be called private property, speaks, in Law 12, of those things which are sacred, religious, or holy. That law is as follows:

"Law XII.—How Sacred or Religious Things Cannot be Owned by Any Person.

"No sacred, religious, or holy thing, devoted to the service of God, can be the subject of ownership by any man, nor can it be considered as included in his property holdings. Although the priests may have such things in their possession, yet they are not the owners thereof. They hold them thus as guardians or servants, or because they have the care of the same and serve God in or with them. Hence they were allowed to take from the revenues of the church and lands what was reasonably necessary for their support; the balance, belonging to God, was to be devoted to pious purposes, such as the feeding and clothing of the poor, the support of orphans, the marrying of poor virgins to prevent their becoming evil women because of their poverty, and for the redemption of captives and the repairing of the churches, and the buying of chalices, clothing, books, and other things which they might be in need of, and other similar charitable purposes."

And then taking up for consideration the first of the classes into which this law has divided these

things, it defines in Law 13, title 28, third partida, consecrated things. That law is as follows:

"Sacred things, we say, are those which are consecrated by the bishops, such as churches, the altars therein, crosses, chalices, censers, vestments, books, and all other things which are intended for the service of the church, and the title to these things cannot be alienated except in certain specific cases as we have already shown in the first partida of this book by the laws dealing with this subject. We say further that even where a consecrated church is razed, the ground upon which it formerly stood shall always be consecrated ground. But if any consecrated church should fall into the hands of the enemies of our faith it shall there and then cease to be sacred as long as the enemy has it under control, although once recovered by the Christians, it will again become sacred, reverting to its condition before the enemy seized it and shall have all the rights and privileges formerly belonging to it."

That the principles of the partidas in reference to churches still exist is indicated by Sanchez Roman, whose work on the Civil Law contains the following statement:

"First Group. Spiritual and corporeal or ecclesiastical. A. Spiritual. From early times distinction has been made by authors and by law between things governed by divine law, called divine, and those governed by human law, called human, and although the former can not be the subject of civil juridical relations, their nature and species should be ascertained either to identify them and exclude them from such relations or because they furnish a complete explanation

of the foregoing tabulated statement, or finally because the laws of the partidas deal with them.

"Divine things are those which are either directly or indirectly established by God for his service and sanctification of men and which are governed by divine or canonical laws. This makes it necessary to divide them into spiritual things, which are those which have a direct influence on the religious redemption of man such as the sacrament, prayers, fasts, indulgences, etc., and corporeal or ecclesiastical, which are those means more or less direct for the proper religious salvation of man.

"7. First Group. Divine things. B. Corporeal or ecclesiastical things (sacred, religious, holy, and temporal belonging to the church). Corporeal or ecclesiastical things are so divided.

"(a). Sacred things are those devoted to God, religion, and worship in general, such as temples, altars, ornaments, etc. These things cannot be alienated except for some pious purpose and in such cases as are provided for in the laws, according to which their control pertains to the ecclesiastical authorities, and in so far as their use is concerned, to the believers and the clergy (2 Derecho Civil Espanol, Sanchez Roman, p. 480; 8 Manresa, Commentaries on the Spanish Civil Code, p. 656; 3 Alcubilla, Diccionario de la Administracion Espanola, p. 486)."

The partidas defined minutely what things belonged to the public in general and what belonged to private persons. In the first group churches are not named. The present Civil Code declares in Article 338 that property is of public or private ownership. Article 339, which defines public property, is as follows:

"Property of public ownership is—

"1. That destined to the public use, such as roads, canals, rivers, torrents, ports, and bridges constructed by the State, and banks, shores, roadsteads, and that of a similar character.

"2. That belonging exclusively to the State without being for public use and which is destined to some public service, or to the development of the national wealth, such as walls, fortresses, and other works for the defense of the territory, and mines, until their concession has been granted."

The code also defines the property of provinces and of pueblos, and in defining what property is of public use, article 334 declares as follows:

"Property for public use in provinces and in towns comprises the provincial and town roads, the squares, streets, fountains and public waters, the promenades, and public works of general service supported by the said towns or provinces.

"All other property possessed by either is patrimonial, and shall be governed by the provisions of this code, unless otherwise prescribed in special laws."

It will be noticed that in neither one of these articles is any mention made of churches. When the Civil Code undertook to define those things in a pueblo which were for the common use of the inhabitants of the pueblo, or which belonged to the State, while it mentioned a great many other things, it did not mention churches.

It has been said that article 25 of the Regulations for the Execution of the Mortgage Law indicates that churches belong to the State and are public property. That article is as follows:

"There shall be excepted from the record required by article 2 of the law:

"*First.*—Property which belongs exclusively to the eminent domain of the State, and which is for the use of all, such as the shores of the sea, islands, rivers and their borders, wagon roads, and roads of all kinds with the exception of railroads; streets, parks, public promenades, and commons of towns, provided they are not lands of common profit to the inhabitants, walls of cities and parks, ports, and roadsteads, and any other analogous property during the time they are in common and general use, always reserving the servitudes established by law on the shores of the sea and borders of navigable rivers.

"*Second.*—Public temples dedicated to the Catholic faith."

A reading of this article shows that far from proving that churches belong to the State and to the eminent domain thereof, it proves the contrary, for if they belonged to the State, they would have been included in the first paragraph instead of being placed in a paragraph by themselves.

The truth is that, from the earliest times down to the cession of the Philippines to the United States, churches and other consecrated objects were considered outside of the commerce of man. They were not public property, nor could they be subjects of private property in the sense that any private person could be the owner thereof. They constituted a kind of property the distinctive characteristic of which was that it was devoted to the worship of God.

But, being material things, it was necessary that some one should have the care and custody of

them and the administration thereof, and the question occurs, To whom, under the Spanish law, was intrusted that possession and administration? For the purposes of the Spanish law there was only one religion. That was the religion professed by the Roman Catholic Church. It was for the purposes of that religion and for the observance of its rites that this church, and all other churches in the Philippines, were erected. The possession of the churches, their care and custody, and the maintenance of religious worship therein were necessarily, therefore, intrusted to that body. It was, by virtue of the laws of Spain, the only body which could under any circumstances have posession of, or any control over, any church dedicated to the worship of God. By virtue of those laws this possession and right of control were necessarily exclusive. It is not necessary or important to give any name to this right of possession and control exercised by the Roman Catholic Church in the church buildings of the Philippines prior to 1898. It is not necessary to show that the church as a juridical person was the owner of the buildings. It is sufficient to say that this right to the exclusive possession and control of the same, for the purposes of its creation, existed.

The right of patronage, existing in the King of Spain with reference to the churches in the Philippines, did not give him any right to interfere with the material possession of these buildings.

Title 6 of Book 1 of the Compilation of the Laws of the Indies treats *Del Patronazgo Real de las Indias*. There is nothing in any one of the fifty-one laws which compose this title which in any way indicates that the King of Spain was the owner of the churches in the Indies because he had

constructed them. These laws relate to the right of presentation to ecclesiastical charges and offices. For example, Law 49 of the title commences as follows:

"Because the patronage and right of presentation of all archbishops, bishops, dignitaries, prebends, curates, and doctrines and all other benefices and ecclesiastical offices whatsoever belong to us, no other person can obtain or possess the same without our presentation as provided in Law 1 and other laws of this title."

Title 15 of the first partida treats of the right of patronage vesting in private persons, but there is nothing in any one of its fifteen laws which in any way indicates that the private patron is the owner of the church.

When it is said that this church never belonged to the Crown of Spain, it is not intended to say that the Government had no power over it. It may be that by virtue of that power of eminent domain which necessarily resides in every government, it might have appropriated this church and other churches, and private property of individuals. But nothing of this kind was ever attempted in the Philippines.

It therefore follows that in 1898, and prior to the treaty of Paris, the Roman Catholic Church had by law the exclusive right to the possession of this church, and it had the legal right to administer the same for the purposes for which the building was consecrated. It was then in the full and peaceful possession of the church, with the rights aforesaid. That these rights were fully protected by the Treaty of Paris is very clear. That treaty, in article 8, provides, among other things, as follows:

"And it is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, can not in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, or of private individuals, of whatsoever nationality such individuals may be."

It is not necessary, however, to invoke the provisions of that treaty. Neither the Government of the United States, nor the Government of these Islands, has ever attempted in any way to interfere with the rights which the Roman Catholic Church had in this building when Spanish sovereignty ceased in the Philippines. Any interference that has resulted has been caused by private individuals, acting without any authority from the Government. Against such interference by private presons with the rights of others, redress is given to the courts of justice without reference to the provisions of the treaty of Paris.

No point is made in the brief of the appellant that any distinction should be made between the church and the convent. The convent undoubtedly was annexed to the church and, as to it, the provisions of Law 19, title 2, book 1, of the Compilation of the Laws of the Indies would apply. The law is as follows:

"We command that the Indians of each town or barrio shall construct such houses as may be deemed sufficient in which the priests of such towns or barrios may live comfortably adjoining

the parish church of the place where they may be built for the benefit of the priests in charge of such churches and engaged in the edeucation and conversion of their Indian parishioners, and they shall not be alienated or devoted to any other purpose."

The evidence in this case makes no showing in regard to the cemetery. It is always mentioned in connection with the church and convent and no point is made by the appellant that if the plaintiff is entitled to recover the possession of the church and convent, he is not also entitled to recover possession of the cemetery. So, without discussing the question as to whether the rules applicable to churches are in all respects applicable to cemeteries, we hold for the purpose of this case that the plaintiff has the same right to the cemetery that he has to the church.

(4) It is suggested by the appellant that the Roman Catholic Church has no legal personality in the Philippine Islands. This suggestion, made with reference to an institution which antedates by almost a thousand years any other personality in Europe, and which existed "when Grecian eloquence still flourished in Antioch, and when idols were still worshipped in the temple of Mecca," does not require serious consideration. In the preamble to the budget relating to ecclesiastical obligations, presented by Montero Rios to the Cortes on the 1st of October, 1871, speaking of the Roman Catholic Church, he says:

"Persecuted as an unlawful association since the early days of its existence up to the time of Galieno, who was the first of the Roman emperors to admit it among the juridical entities protected

by the laws of the Empire, it existed until then by the mercy and will of the faithful and depended for such existence upon pious gifts and offerings. Since the latter half of the third century, and more particularly since the year 313, when Constantine, by the edict of Milan, inaugurated an era of protection for the church, the latter gradually entered upon the exercise of such rights as were required for the acquisition, preservation and transmission of property the same as any other judicial entity under the laws of the Empire. (3 Dictionary of Spanish Administration, Alcubilla, p. 211. See also the royal order of the 4th of December, 1890, 3 Alcubilla, 189)."

The judgment of the court below is affirmed, with the costs of this instance against the appellant. After the expiration of twenty days from the date hereof let judgment be entered in accordance herewith, and ten days thereafter the record be remanded to the court below for execution. So ordered.

ARELLANO, C. J.; TORRES, MAPA and TRACEY, JJ., concur.

JOHNSON, J., reserves his vote.

CARSON, J., concurring in the result:

I am in entire accord with the majority of the court as to the disposition of this case, but I cannot adopt the reasoning by which some of the conclusions appear to have been obtained, nor accept without reserve all of the propositions laid down in the majority opinion.

Profoundly, as I respect the judgment of my associates, and distrustful as I ought to be of my own, the transcendant importance of the issues

involved seems to impose upon me the duty of writing a separate opinion and stating therein as clearly as may be the precise grounds upon which I base my assent and the reasons which forbid my acceptance of the majority opinion in its entirety.

I accept the argument and authority of the opinion of the Court in so far as it finds: That the Roman Catholic Church is a juridical entity in the Philippine Islands; that the defendant, Ramirez, cannot and should not be permitted in this action to deny the plaintiff's right to the possession of the property in question, because he can not be heard to set up title thereto in himself or a third person, at least until he has first formally surrended it to the plaintiff who intrusted it to his care; that the municipality of Lagonoy has failed to show by evidence of record that it is or ever was in physical possession of the property in question; and that the possession of the defendant, Ramirez, can not be relied upon as the possession of the municipality because the same reason which estops Ramirez from denying the right of possession in the plaintiff estops any other person claiming possession through him from denying that right. I agree, furthermore, with the finding that the defendant municipality failed to establish a better right to the possession than the plaintiff in this action, because, claiming to be the owner by virtue of a grant from the Philippine Government, it failed to establish the existence of such grant; and because, furthermore, it was shown that the plaintiff or his predecessors had been in possession and control of the property in question for a long period of years prior to the treaty of Paris by lawful authority of the King of Spain, and that since the sovereignty of these Islands has been trans-

ferred to the United States the new sovereign divest the plaintiff of this possession and control.

Thus far I am able to accept the reasoning of the majority opinion, and these propositions, supported as they are by the law and the evidence in this case, completely dispose of the question before us and establish the right of the plaintiff to a judgment for possession.

I am not prepared, however, to give my assent to the proposition that prior to the treaty of Paris "The King of Spain was not the owner of the property in question nor of any other property like it situated in the Philippine Islands," and inferentially that the United States is not now the owner thereof and has no property rights therein other than, perhaps, the mere right of eminent domain.

I decline to affirm this proposition, first, because it is not necessary in the decision of this case; and second, because I am of opinion that, in the unlimited and unrestricted sense in which it is stated in the majority opinion it is inaccurate and misleading, if not wholly erroneous.

That it is not necessary for the proper disposition of this case will be apparent if we consider the purpose for which it is introduced in the argument and the proposition which it is intended to controvert. As stated in the majority opinion, the claim of ownership of the defendant municipality:

"Is rested upon the following propositions: That the property in question belonged, prior to the treaty of Paris, to the Spanish Government; that by the treaty of Paris the ownership thereof passed to the Government of the United States;

that by Article 12 of the act of Congress of July 1, 1902, such property was transferred to the Government of the Philippine Islands, and that by a circular of that Government, dated November 11, 1902, the ownership and the right to possession of this property passed to the municipality of Lagonoy."

It is evident that if any one of these propositions is successfully controverted, the defendants' claim of ownership must fall to the ground. The majority opinion finds (and I am in entire accord as to this finding), that neither the Government of the United States nor the Philippine Government has ever made, or attempted to make, such transfer, and in making this finding, it completely, conclusively, and finally disposes of defendants' claim of ownership.

All the acts of the Government of the United States and of the present Government of the Philippine Islands which can have any relation to the property in question, are before us, and so short a period of years has elapsed since the transfer of the sovereignty of these Islands to the United States that it is possible to demonstrate with the utmost certainty that by no act of the United States or of the Government of the Philippine Islands has the ownership and possession of this property been conferred upon the defendant municipality; it is a very different undertaking, however, to review the legislation of Spain for the three centuries of her Philippine occupation for the purpose of deciding the much-vexed question of the respective property rights of the Spanish sovereign and the Roman Catholic Church in State-constructed and State-aided churches in these Islands; and if I am correct

in my contention that a holding that the "King of Spain was not," and, inferentially, that the Government of the United States is not, "the owner of this property or any other property like it situated in the Philippine Islands," is not necessary for the full, final, and complete determination of the case at bar, then I think that this Court should refrain from making so momentous a finding in a case wherein the United States is not a party and has never had an opportunity to be heard.

But the mere fact that a finding that the King of Spain had no right of ownership in this property which could pass to the United States under the provisions of the treaty of Paris is not necessary in my opinion for the disposition of the case at bar, would not impose upon me the duty of writing a separate opinion if it were in fact and at law a correct holding. I am convinced, however, that when stated without limitations or restrictions, as it appears in the majority opinion, it is inaccurate and misleading, and it may not be improper, therefore, to indicate briefly my reasons for doubting it.

As stated in the majority opinion, "it does not admit of doubt that the parish churches in the Philippines were built by the Spanish Government," and it would seem, therefore, that prior to their dedication, the beneficial ownership, the legal title, the possession and control of all this property must be taken to have been vested in that Government. But it must be admitted that after this property was dedicated, the ownership, in contemplation of Spanish law, was said to have been in God, and there can be no doubt that the physical possession and control of these churches for the purposes for which they were

dedicated was given to the Roman Catholic Church—not, as I think, absolutely and conclusively, but limited by and subject to the royal patronage (patronato real), which included the right to intervene in the appointment of the representatives of the church into whose hands the possession and control of the sacred edifices were to be intrusted.

The anomalous status thus created might well have given rise to doubts and uncertainties as to the legal title and beneficial ownership of this property had not the grantor and the law giver of Spain expressly and specifically provided that neither the Roman Catholic Church nor any other person was or could become the owner thereof, and that all these sacred edifices were to be regarded as beyond the commerce of men.

"No sacred, religious, or holy thing, devoted to the service of God, can be the subject of ownership by any man, nor can it be considered as included in his property holdings. Although the priests may have such things in their possession, yet they are not the owners thereof. They hold them thus as guardians or servants, or because they have the care of the same and serve God in or with them. Hence they were allowed to take from the revenues of the church and lands what was reasonably necessary for their support; the balance, belonging to God, was to be devoted to pious purposes, such as the feeding and clothing of the poor, the support of orphans, the marrying of poor virgins to prevent their becoming evil women because of their poverty; and for the redemption of captives and the repairing of the churches, and the buying of chalices, clothing, books, and other things which they might be in

need of,„ and other similar charitable purposes." (Law 12, title 28, partida 3.)

It is difficult to determine, and still more difficult to state„ the precise meaning and legal effect of this disposition of the ownership, possession, and control of the parish churches in the Philippines; but since it was not possible for God, in any usual or ordinary sense, to take or hold, to enforce or to defend the legal title to this property, it would seem that a grant to Him by the King or the Government of Spain could not suffice to convey to Him the legal title of the property set out in the grant, and the truth would seem to be that the treatment of this property in contemplation of Spanish law as the property of God was a mere arbitrary convention, the purpose and object of which was to crystallize the status of all such property in the peculiar and unusual mold in which it was cast at the time of its dedication.

So long as the Church and state remained united, and so long as the Roman Catholic Church continued to be the church of the State, this convention served its purpose well; indeed, its very indefiniteness seems to have aided in the accomplishment of the end for which it was adopted, and on a review of all the pertinent citations of Spanish law which have been brought to my attention, I am satisfied that the status created by the above cited law 12 of the partidas continued without substantial modification to the date of the transfer of sovereignty from the King of Spain to the United States. But this transfer of sovereignty, and the absolute severance of church and state which resulted therefrom, render it necessary to ascertain as definitely as may be the true meaning and intent of this conventional treatment of the parish churches in the Philippines as the property

of God, and it is evident that for this purpose we must look to the substance rather than the form and examine the intention of the grantor and the object he sought to attain, rather than the words and conventional terms whereby that intent was symbolically expressed.

It was not necesary to go beyond the citations of the majority opinion to see that the objects which the grantor sought to attain were, first, and chiefly, to advance the cause of religion among the people of the Philippine Islands, and to provide for their religious instruction and edification by furnishing them with parish churches suitable for the worship and glorification of God; second, to place those sacred edifices under the guardian care and custody of the church of the State; and, third, to deny to that church and to all others the right of ownership in the property thus dedicated; and since God could neither take or hold the legal title to this property, the declaration of the King of Spain as set out in the above cited law, that when dedicated these churches became in some peculiar and especial manner the property of God, was in effect no more than a solemn obligation imposed upon himself to hold them for the purposes for which they were dedicated, and to exercise no right of property in them inconsistent therewith.

This declaration that these churches are the property of God, and the provisions which accompanied it, appear to me to be precisely equivalent to a declaration of trust by the grantor that he would hold the property as trustee for the use for which it was dedicated—that is, for the religious edification and enjoyment of the people of the Philippine Islands—and that he would give to the Roman Catholic Church the physical possession and control thereof, including the disposition of

any funds arising therefrom, under certain stipulated conditions and for the purposes expressly provided by law. In other words, the people of the Phillipine Islands became the beneficial owners of all such property, and the grantor continued to hold the legal title, in trust, nevertheless, to hold the property for the purposes for which it was dedicated, and on the further trust to give the custody and control thereof to the Roman Catholic Church. If this interpretation of the meaning and intent of the convention of Spanish law which treated God as the owner of the parish churches of the Phillipine Islands be correct, a holding that the King of Spain had no right of ownership in this property which could pass to the United States by virtue of the treaty of Paris cannot be maintained, and it is to withhold my assent from this proposition that I have been compelled to write this separate opinion.

For the purposes of this opinion it is not necessary, nor would it be profitable, to do more than indicate the line of reasoning which has led me to my conclusions, nor to discuss at length the question of ownership of this property, because whether it be held to be in abeyance or in God, or in the Roman Catholic Church, or in the United States, it has been shown, without deciding this question of ownership, that the right to the possession for the purpose for which it was dedicated is in the Roman Catholic Church, and while the complaint in this action alleges that the Roman Catholic Church is the owner of the property in question, the prayer of the complaint is for the possession of this property, of which it is alleged that church has been unlawfully deprived; and because, furthermore, if I am correct in my con-

tention that the legal title to the State-constructed churches in the Philippines passed to the United States by virtue of the treaty of Paris, it passed, nevertheless, subject to the trusts under which it was held prior thereto, and the United States cannot at will repudiate the conditions of that trust and retain its place in the circle of civilized nations; and as long as this property continues to beused for the purposes for which it was dedicated, the Government of the United States has no lawful right to deprive the Roman Catholic Church of the possession and control thereof under the terms and conditions upon which that possession andcontrol were originally granted.

JUDGMENT AFFIRMED.

Barlin *vs.* Ramirez *et al.*, Phil. Reps., Vol. 7, p. 41-65.

Supreme Court of the United States,

OCTOBER TERM, 1907.

No. 143.

Office Supreme Court, U. S.
FILED.
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JAMES H. McKENNEY,
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THE MUNICIPALITY OF PONCE,

Appellant,

against

THE ROMAN CATHOLIC APOSTOLIC CHURCH IN PORTO RICO.

Appendix No. 2 to Brief ~~in Reply~~. for Appellee

Recent Philippine Decisions printed by Request of the Court.

PAUL FULLER,
FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
Of Counsel for Appellee,
No. 2 Rector Street,
New York.

B. H. TYRREL, PRINTER, 206-8 FULTON STREET, NEW YORK.

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Appendix No. 2 to Brief ~~in Reply.~~ for Appellee

Recent Philippine Decisions Printed by Request of the Court.

In accordance with the request of one of the Honorable Justices, made at the close of the argument, we print herewith, for the convenience of the Court, the following Philippine decisions, which appear in the Official Gazette of Manila, for January 22d, 1908.

This official publication we have just received through the courtesy of the Insular Bureau, and the two decisions herein reprinted are the latest utterances of the Philippine Supreme Court upon the questions involved in the case at bar.

It will be observed that these decisions reaffirm and reiterate the doctrine of Barlin *v.* Ramirez, 7 Phil. Rep., 41, which case is annexed as an appendix to our Brief ~~in Reply~~.

The propositions for which these cases stand are:

First.—That the Church had a juristic personality;

Second.—That it was capable under the Spanish law of acquiring property, and

Third.—That the property once acquired, whether from private donation or from the Spanish Government under its duty to support and maintain religion, became inalienably vested in the Church. Not only was this true of properties devoted to secular uses, but it was also particularly true in regard to the Temples, which appear to have passed completely into the control, dominion, and ownership of the Church by the very fact of consecration, which was evidently deemed to leave no adverse title outstanding in the Crown or any private person. While the Spanish Government, by virtue of its temporal supervisory jurisdiction over church matters (*jus patronatus*), could perhaps have prevented the Temples from being alienated for other uses than those to which they had been dedicated, no such power, in the nature of our institutions, could possibly pass to the United States. Under the circumstances of the cession and the guarantee of the Treaty, these Temples, which had been for so many years in the possession of the Church, must necessarily remain in such possession, and their title must be

free from interference either by the People of Porto Rico or by the several municipalities.

New York, March 4, 1908.

Respectfully submitted,
PAUL FULLER,
FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
Of Counsel for Appellee,
No. 2 Rector Street,
New York.

[No. 3212. December 28, 1907.]

THE ROMAN CATHOLIC APOSTOLIC CHURCH, ET AL., Plaintiffs.

vs.

THE MUNICIPALITIES OF TARLAC AND VICTORIA, PROVINCE OF TARLAC, ET AL., Defendants.

1. Realty; Church Property.—Barlin *vs.* Ramirez (7 Phil. Rep., 41) followed as to the right to the possession of ecclesiastical property.

2. Id.; Id.—Bishop of Cebu *vs.* Mangaron (6 Phil. Rep., 286) followed with respect to the right of the former possessor to maintain an action to recover possession from defendant who has no title or interest in the property.

3. Acts of the Philippine Commission; Constitutionality.—Act No. 1376 is not in conflict with section 5 of the act of Congress of July 1, 1902, and does not deny to the municipalities therein mentioned the equal protection of the laws.

Original Action in the Supreme Court. Recovery of possession of realty.

The facts are stated in the opinion of the Court.

HARTIGAN, ROHDE & GUTIERREZ, for Plaintiffs.
BUENCAMINO & DIOKNO, for Defendants.

WILLARD, J.:

This is an original action brought in this court by virtue of the provisions of Act No. 1376. The construction of certain sections of this act has been twice before us in The Roman Catholic Church *vs.* The Municipality of Badoc *et al.* (6 Phil. Rep., 345) and The Roman Catholic Church *vs.* The Municipality of Badoc *et al.* (7 Phil. Rep., 566).

The complaint as amended alleged that the Roman Catholic Church was the owner of, and till within a few years before the filing of the complaint had been in possession of, the following described lands:

V.

(*a*) In the said municipality of Tarlac:

1. The open square known as the plaza of the church of Tarlac, situated within the area which formerly constituted the pueblo of Tarlac.

2. In the territory which formerly constituted the pueblo of La Paz and is now the barrio of La Paz in the municipality of Tarlac;

The grounds of the old church of La Paz, known as the grounds of the old church and convent of La Paz;

The grounds of the old cemetery of La Paz, known as the old cemetery of La Paz;

The new cemetery of La Paz, known as the new cemetery of La Paz.

The above-mentioned lands are at present in the possession of and under the administration of the defendants, Gregorio Aglipay and the municipality of Tarlac.

(*b*) In the said municipality of Victoria:

1. The grounds of the church of Victoria, bounded by the four streets called *procesionales* and known as the plaza of the church of Victoria;

2. The chapels and their corresponding grounds, situated in the barrios of Calibungan, San Andres, Balbaloto, and Bantog;

The above-mentioned properties are at present in the possession of and under the administration of the defendants, Gregorio Aglipay, Antonio Mariano, Canuto Aglipay, Geronimo Velasco, municipal president of Victoria, and the municipality of Victoria.

The prayer of the amended complaint was that the Roman Catholic Church be declared to be the owner of the property described therein and that no one of the defendants had any right or interest therein. It also asked for the appointment of a receiver and a preliminary injunction prohibiting the use of the property, during the pendency of the action, by the Independent Filipino Church.

The complaint was duly served on all of the

defendants except Antonio Mariano. The only answer which was filed purported to be the answer of *la parte demandada*. In the case above cited, reported in Volume VI, Philippine Reports, page 345, we said that on its face this was an answer of all the defendants. Whether in this particular case it was intended as such is rendered doubtful by other circumstances which appear therein. However, as it was the only answer filed in the case, if it is be considered as the answer only of Gregorio Aglipay, all the other defendants would be in default, and by the terms of section 4 of said act judgment could be entered against them without proof of any of the allegations of the complaint.

A commissioner was appointed to take evidence and such evidence was taken and reported to the Court. Thereafter the plaintiffs and the Attorney-General, acting by direction of the Governor-General, as the representative of the defendant municipalities of Tarlac and Victoria, made an agreement as follows:

> That the plaintiff's complaint herein, so far as it alleges ownership and right of occupation of all public highways and plazas, and especially the plazas in the municipalities of Tarlac and Victoria, in the Province of Tarlac, shall be dismissed without prejudice and all claim on the part of the plaintiffs thereto shall be eliminated from said action.

In the brief filed by the plaintiffs, they say that the matter in dispute in the case is reduced to the lands described in paragraph 5, (*a*) 2—that is to say, to the lot on which the church of the former pueblo of La Paz, now a barrio of the municipality of Tarlac, was situated, and the old cemetery and the new cemetery of the same barrio.

The only questions to be considered, therefore, relate to this property in the barrio of La Paz, in the municipality of Tarlac, and the only defendants interested therein are the defendants Gregorio Aglipay and the municipality of Tarlac.

The evidence presented by the plaintiffs in regard to this property showed that the church in the barrio of La Paz had been destroyed during the revolution, and that prior to its destruction it, and the two cemeteries, had been for more than twenty-five years under the control of, and administered by, the Roman Catholic priests of that pueblo. The defendants presented before the commissioner no evidence at all relating to this property.

In the answer above referred to it is alleged that the property described in the complaint is public property belonging to the Government of the Philippine Islands; that the possession enjoyed by the plaintiff church of the property was only for the purpose of administration, and that all its rights thereto ceased when the Spanish sovereignty ceased in these Islands. It is also alleged that the Independent Filipino Church took possession of the property by virtue of the circular of the Insular Government of the 10th of January, 1903, for the purpose of administering it for the benefit of the inhabitants of the municipality.

It will thus be seen that upon this branch of the case the only question presented either by the answer or by the brief is the question as to whether the property in controversy is or is not owned by the Government of the Philippine Islands, and the brief is devoted principally to an argument of this question, a question which has been discussed and decided adversely to the claim of

the defendants in the cases of Barlin *vs.* Ramirez (7 Phil. Rep., 41), Roman Catholic Church *vs.* Santos (7 Phil. Rep., 66), and the City of Manila *vs.* The Roman Catholic Church),[1] decided March 25, 1907.

It was there held that the King of Spain was not the owner of the property involved in those cases, and that the title thereto did not, therefore, pass by the treaty of Paris to the Government of the United States. It was further held that the municipalities were not the owners of such property and had no right or interest therein. Applying the principle of those cases to this case, the result is that the plaintiffs are entitled to judgment for possession as prayed for in the complaint.

There is, moreover, another line of reasoning by which the same result is reached, without taking into consideration the peculiar nature of the property here in controversy, and without considering that it is property devoted to religious worship.

It was proven at the trial that the plaintiff church had been in possession of this property for more than twenty-five years. It was admitted in the answer and in the briefs that such possession had existed up to at least 1898. The defendants, in or after that year, took possession of the property. As we have seen, they did so without any right whatever. Under such circumstances, we have held that the plaintiff church can maintain an action to recover the possession of which it has thus been deprived, notwithstanding the fact that it did not commence such action within one year from the time when it lost pos-

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[1] 8 Phil. Rep., 763.

session. In other words, where the defendant is able to show no title or interest in himself, a plaintiff who has been in possession of the property for a great number of years may recover such possession of the defendant, although the plaintiff has no written evidence of ownership. This was held in the case of the Bishop of Cebu *vs.* Mangaron (6 Phil. Rep., 286). In that case it was said, at page 299:

> Article 1635 of the old Code of Civil Procedure not having been repealed by the Civil Code, if the *acción publiciana* existed prior to its enactment, it must necessarily exist after such enactment. We consequently conclude that the action brought by the plaintiff in this case to recover the possession of which he was unlawfully deprived by the defendant can be properly maintained under the provisions of the present Civil Code considered as a substantive law, without prejudice to any right which he may have to the ownership of the property, which ownership he must necessarily establish in order to overcome the presumption of title which exists in favor of the lawful possessor, the plaintiff in this case, who had been in the quiet and peaceful possession of the land for twenty years, more or less, at the time he was wrongfully dispossessed by the defendant.

During the progress of this case the defendant, Gregorio Aglipay, made a motion to dismiss the same on the ground that Act No. 1376 was void because it was inconsistent with the provisions of the act of Congress of July 1, 1902, relating to the Philippine Islands.

We held in the case reported in Volume VI, Philippine Reports, page 345, above cited, that this objection could not be raised by motion, but must be considered when the case was decided up-

on its merits. The same question has been presented by the answer and argued in the brief.

The particular ground on which this claim is based is, that the law denies to the Independent Filipino Church and the municipalities the equal protection of the laws, and is therefore in violation of the first paragraph of section 5 of the Act of Congress above cited, which provides:

> That no law shall be enacted in said Islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.

Act No. 1376 gives original jurisdiction to this court of controversies between the Roman Catholic Church and the Filipino Independent Church and the municipalities of the Islands relating to the ownership of church property therein. It provides that the Roman Catholic Church may commence an action in this court against the Independent Filipino Church and the municipalities in relation to the property above mentioned. It also provides that the municipalities may commence such action in this court against the Roman Catholic Church. But it is said that the law discriminates against the municipalities in that it does not allow them to commence such actions without the consent of the Attorney-General and that the municipalities are thereby denied the equal protection of the laws. We see nothing whatever in this point, nor in any other of the suggestions made in the motion and brief of the defendants. In the case of The United States *vs.* The Union Pacific Railroad Co. (98 U. S., 569) there was under discussion an act of Congress which directed the Attorney-General to commence

suit in equity in any circuit court of the United States against the Union Pacific Railroad Company and other defendants. That law gave to the plaintiff in that case rights which were not enjoyed by other plaintiffs suing in the same court and imposed obligations upon the defendants which were not imposed upon other persons sued as defendants therein. It was claimed that the act was void as being in violation of the fifth amendment to the Constitution, and it was also said that it violated "the fundamental right of citizens under a free government to equality before the law." In holding the law constitutional, the court said, at page 608:

> We are of opinion, therefore, that the act in question was intended not to change the substantial rights of the parties to the suit which it authorized, but to provide a specific method of procedure, which, by removing restrictions on the jurisdiction, process and pleading in ordinary cases, would give a larger scope for the action of the court, and a more economical and efficient remedy than before existed, and that it is a valid and constitutional exercise of legislative power.

By section 9 of the act of Congress of July 1, 1902, above cited, it is provided as follows:

> That the Supreme Court and the Courts of First Instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided, and such additional jurisdiction as shall hereafter be prescribed by the Government of said Islands, * * *.

This provision did not take away from the Commission the power to pass the act in question.

It is therefore by the court adjudged and decreed that this action be dismissed without costs

as to the defendants Canuto Aglipay, Gerónimo Velasco, and the municipality of Victoria.

It is further adjudged and decreed that all of the property described in the complaint, as amended, be eliminated therefrom, except that relating to the land upon which the church of the barrio of La Paz, in the municipality of Tarlac, was situated, and the old cemetery of said barrio and the new cemetery of said barrio, and as to the property thus eliminated this court makes no determination in regard to the rights of the parties to this action in relation thereto.

It is further adjudged and decreed that the plaintiff, the Roman Catholic Apostolic Church, is entitled to the immediate possession of the following-described property situated in the municipality of Tarlac, Province of Tarlac; to wit: The grounds of the old church of La Paz, known as the grounds of the old church and convent of La Paz; the grounds of the old cemetery of La Paz, known as the old cemetery of La Paz, and the new cemetery of La Paz, known as the new cemetery of La Paz; and that neither the municipality of Tarlac nor the defendant, Gregorio Aglipay, *obispo maximo* of the Independent Filipino Church, has any right, title, or interest therein.

It is further adjudged and decreed that the property last hereinbefore mentioned be returned to the plaintiffs and that the said defendants be ousted from the possession thereof, and that such possession be awarded to the plaintiffs.

It is further adjudged and decreed that a writ of possession issue out of this court against the defendants, the municipality of Tarlac and Gregorio Aglipay, *obispo maximo* of the Independent Filipino Church, in the manner and form pre-

scribed by Act No. 190. No costs will be allowed to any party. So ordered.

Arellano, C. J. Torres, Mapa, and Tracey, JJ., concur.

JOHNSON and CARSON, JJ., concurring:

We agree with the dispositive part of the foregoing decision, which adjudges the right of possession in favor of the plaintiffs, adopting in this case the reasoning of the concurring opinion in the case of Barlin *vs.* Ramirez (7 Phil. Rep., 41).

Action dismissed; writ of possession granted to plaintiffs.

[No. 3133. January 2, 1908.]

THE ROMAN CATHOLIC APOSTOLIC CHURCH, ET AL., Plaintiffs,

vs.

THE MUNICIPALITIES OF CUYAPO, Aliaga, San Antonio, San Isidro, Cabanatuan, Talavera, and Licab, Province of Nueva Ecija, *et al.*, Defendants.

Realty; Church Property.—The case of the Roman Catholic Church *et al. vs.* The Municipali-

ties of Tarlac and Victoria *et al.* (6 Off. Gaz., 117) followed as to the right of possession of ecclesiastical property and as to the right of the former possessor to recover the possession from one who has no title or interest in the property.

Original Action in the Supreme Court. Recovery of possession of realty.

The facts are stated in the opinion of the court.

HARTIGAN, ROHDE & GUTIERREZ, for Plaintiffs.
BUENCAMINO & DIOKNO, BENITO NATIVIDAD, and PEDRO CARMEN, for Defendants.

WILLARD, J.:

This is an original action brought in this court by virtue of the provisions of Act No. 1376. It is in all respects similar to the case of The Roman Catholic Apostolic Church *et al.*, *vs.* The Municipality of Tarlac and Victoria, in the Province of Tarlac, *et al.*[1]

The complaint was duly served upon all the defendants, and an answer was filed on behalf of Gregorio Aglipay, and other answers were presented by some of the municipalities who were made defendants. After the evidence was taken in the case, there was the same agreement made therein between the plaintiffs and the Attorney-General in reference to the public squares and streets as was made in the case above cited, relating to the municipalities of Tarlac.

In the brief filed by the plaintiffs they say that the matter in dispute in the case is reduced to the church, convent, and cemetery of Cayapo, the church and cemetery of Zaragoza in the munici-

[1] 6 Off. Gaz., 117.

pality of Aliaga, and the cemetery of the municipality of Talavera.

As to the property in Cuyapo, the municipality made an answer in which it disclaimed any interest whatever in any of the property described in the complaint, stating, however, that it was occupying certain apartments in the convent by permission of the priest of the Independent Filipino Church, who was in possession of the whole thereof. The evidence offered as the trial also showed that the municipality made no claim in its own right to any of the property in question, but that it was occupying, as stated in its answer, certain parts of the convent. The only defendants interested in this property in Cuyapo, are, therefore, the municipality of Cuyapo and Gregorio Aglipay.

The municipality of Aliaga filed an answer relating to the church and cemetery of Zaragoza in which it disclaimed any interest whatever therein and expressed its willingness to deliver the property to anyone to whom the court might direct its delivery.

As to the cemetery in the municipality of Talavera, that municipality filed an answer claiming to be the owner thereof.

It appears that the only persons, therefore, interested in any of the property now in controversy in this case are the three municipalities of Cuyapo, Talavera, and Aliaga and the defendant, Gregorio Aglipay.

The evidence in this case is similar to the evidence presented in the case referred to, relating to the municipalities of the Province of Tarlac, and it shows that the plaintiff church had been in possession of the property for many years when it lost its possession about 1902. As to the church

property in Cuyapo, the evidence shows that it is in the possession of the Independent Filipino Church.

There are the same reasons for entering judgment for the plaintiffs in this case as appeared in the case above mentioned.

It is therefore by the court adjudged and decreed that this action be dismissed, without costs as to all the defendants except Gregorio Aglipay, the municipality of Cuyapo, the municipality of Aliaga, and the municipality of Talavera.

It is further adjudged and decreed that all of the land described in the complaint, as amended, be eliminated therefrom except that relating to the church, convent, and cemetery of Cuyapo, the church and cemetery of Zaragoza, barrio of Aliaga, and the cemetery of Talavera; and as to the property thus eliminated, this court makes no determination in regard to the rights of the parties to this action thereto.

It is further adjudged and decreed that the plaintiff, the Roman Catholic Apostolic Church, is entitled to the immediate possession of the following-described property, situated in the municipality of Cuyapo, in the Province of Nueva Ecija, to wit:

The church and the convent built of strong materials and with corrugated iron roof, known as the church and convent of Cuyapo.

The cemetery known as the cemetery of Cuyapo.

In the municipality of Aliaga, in the said Province of Nueva Ecija, the following-described property, to wit:

A church building situated in the former municipality of Zaragoza, now a barrio of Aliaga, and known as the church of Zaragoza.

A cemetery situated in the former municipality of Zaragoza, now a barrio of Aliaga, and known as the cemetery of Zaragoza.

And in the municipality of Talavera, in said Province of Nueva Ecija, the following-described property, to wit:

The cemetery known as the cemetery of Talavera.

It is further adjudged and decreed that neither the said municipality of Cuyapo, nor the said municipality of Aliaga, nor the said municipality of Talavera, nor Gregorio Aglipay, *obispo maximo* of the Independent Filipino Church, has any right, title, or interest in or to any of the property hereinbefore described.

It is further adjudged and decreed that the property hereinbefore mentioned be returned to the plaintiffs and that the said defendants be ousted from the possession thereof and that said possession be awarded to the plaintiffs.

And it is further adjudged and decreed that a writ of possession issue out of this court against the defendant Gregorio Aglipay, *obispo maximo* of the Independent Filipino Church, in the manner and form prescribed in Act No. 190, for the recovery of the church, cemetery, and convent hereinbefore described as situated in the municipality of Cuyapo, and against the municipality of Cuyapo for the recovery of the possession of the convent in said municipality, hereinbefore described; and against Gregorio Aglipay, *obispo maximo* of the Independent Filipino Church, and the municipality of Aliaga for the recovery of the church and cemetery of Zaragoza; and against Gregorio Aglipay, *obispo maximo* of the Independent Filipino Church, and the municipality of Talavera for the recovery of the cemetery in Tala-

vera. No costs will be allowed to either party in this court. So ordered.

Arellano, C. J., Torres, Mapa, and Tracey, JJ., concur.

Johnson and Carson, JJ., concur in the result.

Action dismissed; writ of possession granted to plaintiffs.

MUNICIPALITY OF PONCE *v.* ROMAN CATHOLIC APOSTOLIC CHURCH IN PORTO RICO.

APPEAL FROM THE SUPREME COURT OF PORTO RICO.

No. 143. Argued March 3, 1908.—Decided June 1, 1908.

Under the organic act of Porto Rico, March 2, 1901, 31 Stat. 77, the legislative assembly has express authority to legislate regarding the jurisdiction and procedure of its courts, and it has been usual for Congress to give such power to the legislatures of the Territories.

Such legislation was not contrary to the Constitution and was in conformity with the power conferred by Congress upon the legislative assembly to regulate the jurisdiction of the courts.

Since April 11, 1899, Porto Rico has been *de facto* and *de jure* American territory, and its history and its legal and political institutions up to the time of its annexation will be recognized by this court.

As to our insular possessions the Spanish law is no longer foreign law, and the courts will take judicial notice thereof so far as it affects those possessions.

The act of legislative assembly of Porto Rico of March 10, 1904, conferring jurisdiction on the Supreme Court of Porto Rico for the trial and adjudication of property claimed by the Roman Catholic Church was within its legislative power.

The general prohibition in the act of July 30, 1886, 24 Stat. 170, against territorial legislatures passing special laws does not apply where specific permission is granted by the organic act of a particular Territory.

Because it gives a certain corporation a right to maintain an action, a law cannot be regarded as a special law granting an exclusive privilege where it confers equal rights upon the people and the municipalities affected by the right and interested in matters affected.

A dedication to a public or charitable use may exist, even where there is no specific corporate entity to take as grantee. *Werlein* v. *New Orleans*, 177 U. S. 390.

The Roman Catholic Church has been recognized as possessing legal personality by the treaty of Paris with Spain of 1898 and its property rights solemnly safeguarded. In so doing the treaty followed the recognized rule of international law which would have protected the property of the church in Porto Rico subsequent to the cession. The juristic personality of the Roman Catholic Church and its ownership of property was formally recognized by the concordats between Spain and the papacy and by the Spanish laws from the beginning of settlements in the Indies. Such recognition has also been accorded the church by all systems of European law from the fourth century of the Christian era.

The fact that a municipality in Porto Rico furnished some of the funds for building or repairing the churches cannot affect the title of the Roman Catholic Church, to whom such funds were thus irrevocably donated and by whom these temples were erected and dedicated to religious uses.

THIS suit was commenced by the Roman Catholic Church in Porto Rico through the Bishop of that diocese against the municipality of Ponce. The complaint fully set forth the facts by reason of which relief was demanded. A demurrer was interposed, which was overruled, and leave to answer granted, which defendant having failed to do, judgment was entered by default.

It appeared that the Roman Catholic Church had been for many years in the lawful and peaceful possession of two churches, or temples, one in Ponce and one in Playa, the port of Ponce, dedicated, consecrated to and always used by the Catholic Church for its worship.

The petition alleged, among other things, that "these temples or churches were built with the funds of the municipality within which they are situated, and since then they have been maintained by donations and alms from the parishioners; and with respect to them their possession by the Catholic Church runs for many years, counting from the time when the build-

ing of the same was completed. And none of the buildings of those temples, since they were built, have been used for any other purpose than Catholic worship."

In 1827, by reason of steps taken by the royal alcalde of Ponce and by the then governor of the island, Don Simon de la Torre, a board or commission having jurisdiction over the repairing and conservation of churches advised the governor that it was "in keeping with the decorum of a rich and Christian city like Ponce to have a temple which would show that such conditions existed covered with an arched roof, and not a roof of thatch," etc.

The petition describes with considerable minuteness of detail the various steps taken to rebuild or repair this church at Ponce. The last estimate for repairs was made in 1872.

It is evident from the record that the sums expended came from several distinct sources—

(1) Funds voluntarily contributed by the parishioners; (2) the funds of the "House of the King;" (3) an assessment made in 1835-36; (4) moneys advanced by the municipality.

As to the church at Playa, it was erected in part, at least, with funds donated by the parishioners and apparently on private land.

Whether the funds subsequently used for repairs of either or both of the temples were in part derived directly from the municipality or merely taken by way of loan, was a matter between the central government and the municipality, which could not affect the title of the church under the then existing relations between church and State.

The complaint then alleged:

"13. The city council of the city of Ponce has included in the inventory of its property the parochial church, described in the first allegation of the complaint, on the ground that from time immemorial the said church has been included in that inventory. We do not know the exact date on which that inventory may have been made, but according to the information we have it only runs back a few years from this date.

"14. After the change of sovereignty the city council of Ponce attempted to record in the registry of property the possession of the said church, and the lot upon which the same is situated, but in view of the fact that this was contrary to the provisions of paragraph 2 of article 25 of the regulations for the application of the mortgage law, which excludes the inscription of public temples used for Catholic worship, the registrar of property of the district of Ponce refused to make the inscription, unless a decision be obtained from the secretary of justice to authorize the same, notwithstanding the prohibitive provisions of the regulations. The secretary of justice rendered the decision applied for, repealing, without being a legislative authority, the said article 25 of the regulations in its second paragraph."

The Supreme Court of Porto Rico rendered the following judgment at San Juan, Porto Rico, May 21, 1906:

"This cause having heretofore been regularly called for decision upon the demurrer filed by the defendant to the plaintiff's complaint, and the same having been duly considered and overruled, and leave granted the defendant to file an answer within the time prescribed by law, and the said defendant having failed to file such answer, and judgment by default having been duly rendered therein, all of which proceedings appear in the record of this court, it is accordingly now hereby ordered, adjudged and decreed that the plaintiff have judgment against the defendant as prayed for in the complaint, and that all adverse claims whatsoever of the defendant and of all persons claiming or to claim the property herein described, or any part thereof, under said defendant, are hereby ordered, adjudged and decreed to be invalid and groundless, null and void; and that the plaintiff be and hereby is declared, adjudged and decreed to be the sole, true and lawful owner of the houses and lands hereinafter described, as set forth in the complaint, and every part and parcel thereof, and that the title of the plaintiff thereto is adjudged and decreed to be quieted against any and all claims and demands

of the defendant; and the said defendant is hereby perpetually enjoined and estopped from setting up any claim or title whatever thereto, or to any part thereof.

"Said premises are bounded and described as follows:

" 'The first is a building constructed of brick and masonry, situated in the city of Ponce, on an area of sixty-five meters and eight centimeters wide, including the walk, the building measuring forty-eight meters long by twenty-four meters and sixty-seven centimeters wide; bounded on the north by the Plaza Principal; on the south by the Plaza de las Delicias; on the east by the fire department, which is situated on the same lot or yard as the church; on the west by the said Plaza Principal.

" 'The second is another building situated in the center of the Plaza de la Playa de Ponce; the superficial area whereof measures forty-two meters and twenty centimeters long, by nineteen meters and forty centimeters wide; including the walk, the building measuring eighteen meters and thirty centimeters long by sixteen meters and twenty centimeters wide. It is bounded on all four sides by the Plaza de la Playa.'

"The inscription of possession heretofore made in the registry of property at Ponce, concerning the above said properties, in favor of the defendant, the municipality of Ponce, is hereby cancelled and declared to be utterly null and void, and the proper endorsement must be made upon the said registry indicating the same.

"It is hereby further ordered, adjudged and decreed that the plaintiff do have and recover all costs of this suit, which are hereby taxed at $—— dollars, and that the defendant be ordered to pay the same within thirty days from this date.

"Thus we pronounce, command and sign."

The case was then appealed to this court, and the following errors assigned:

"First. That the Supreme Court of Porto Rico was without jurisdiction of the subject-matter in controversy.

"Second. That said court was without jurisdiction of the parties.

"Third. That the said court erred in overruling the general demurrer and the eleven special grounds of demurrer interposed by the defendant to the complaint filed in said cause.

"Fourth. That the said court erred in rendering judgment against defendant in said cause, upon the pleadings in said cause, and that the judgment is contrary to the law and the facts as stated in the pleadings in said cause.

"Fifth. That the court erred in entering judgment without taking evidence and proofs or setting the cause upon the docket for hearing.

"Sixth. That the said court erred in rendering judgment in favor of the plaintiff and against the defendant in said cause."

Mr. Frederick L. Cornwell, for appellant, submitted:

The act of the legislative assembly of Porto Rico, approved March 10, 1904, conferring original jurisdiction on the Supreme Court of Porto Rico is absolutely void, as being contrary to the Fourteenth Amendment to the Constitution of the United States. *Davidson* v. *New Orleans*, 96 U. S. 101; *Weimar* v. *Bunbury*, 30 Michigan, 214; *Robertson* v. *Baldwin*, 165 U. S. 281; *Wally's Heirs* v. *Kennedy*, 2 Yerg. (Tenn.) 554; *Guy et al.* v. *Hermance et al.*, 5 California, 73.

The act is void for the further reason that the legislative assembly had no power to enact a private or special law, such being contrary to the organic act establishing civil government in Porto Rico and contrary to the acts of Congress applicable to all Territories. 31 Stat. at Large, 77 (§ 14); 24 Stat. at Large, p. 170; *Martin* v. *Territory*, 8 Oklahoma, 41; *S. C.*, 48 Pac. Rep. 106.

The legislative assembly exceeded its power and authority when it attempted to alter, change, amend or augment the jurisdiction of the Supreme Court of Porto Rico, and the Supreme Court of Porto Rico was absolutely without the power

and authority to hear and adjudicate this case as a *nisi prius* or trial court, and all the proceedings had by the Supreme Court in this case are absolutely null and void. 31 Stat. at Large, 77; *Perris* v. *Higley et al.*, 20 Wall. 375; *Territory* v. *Ortiz*, 1 N. M. 5; Cooley on Constitutional Limitations (3d ed.), p. 392.

The Supreme Court of Porto Rico was without jurisdiction of the parties, because the Roman Catholic Church in Porto Rico is neither a natural person nor a corporation, or if a corporation then it has not complied with the laws so as to enable it to sue and be sued in the courts of Porto Rico. The laws of Porto Rico having specifically stated the terms under which a foreign corporation may do business in Porto Rico, it was necessary that the church should show that it had complied with all these conditions before it could be entitled to sue.

Mr. Frederic R. Coudert and *Mr. Howard Thayer Kingsbury*, with whom *Mr. Paul Fuller* was on the brief, for appellee:

The law under which this suit was brought by the church is a valid enactment of the legislative assembly of Porto Rico, wholly within the scope of its powers under the organic act. *Kent* v. *Porto Rico*, 207 U. S. 113, 117. The act does not come within the prohibitions, in the general laws of Congress relating to the Territories, as to local and special laws, etc. *American Ins. Co.* v. *Canter*, 1 Pet. 511; *Hornbuckle* v. *Toombs*, 18 Wall. 648. But whether so or not, the act under consideration is not objectionable as a special law. *Vanzant* v. *Waddell*, 2 Yerg. 260; *Cotting* v. *Kansas City Stock Yards Co.*, 183 U. S. 105; *People ex rel. Kenny* v. *Folks*, 89 App. Div. (N. Y.) 179; *United States* v. *Union Pac. Co.*, 98 U. S. 569. See also *Bank of Columbia* v. *Okely*, 4 Wheat. 255; *Bank of Newbern* v. *Taylor*, 6 N. C. 266.

The Roman Catholic Church in Porto Rico is a juristic personality and a legal entity under the laws of Porto Rico, as it had always been under the Spanish laws in force in the island at the time of the ratification of the Treaty of Paris.

210 U. S. Opinion of the Court.

The Roman Catholic Church has been recognized as possessing a legal personality and a capacity to take and acquire property since the time of the Emperor Constantine. The American law has been no less liberal in recognizing the corporate entity of churches than has the European and English law. *Werlein* v. *New Orleans*, 177 U. S. 390, 401. The Holy See still occupies a recognized position in international law of which the courts must take judicial notice. 1 Moore's Digest of Int. Law, pp. 130, 131.

Upon the facts stated in the petition the church has a good title to the property in question.

MR. CHIEF JUSTICE FULLER, after making the foregoing statement, delivered the opinion of the court.

This suit was brought under an act of the legislative assembly of Porto Rico, entitled "An act to confer original jurisdiction on the Supreme Court of Porto Rico for the trial and adjudication of certain property claimed by the Roman Catholic Church in Porto Rico," approved March 10, 1904, as follows:

"*Be it enacted by the Legislative Assembly of Porto Rico:*

"SEC 1. Original jurisdiction is hereby conferred on the Supreme Court of Porto Rico for the trial and adjudication of all questions now existing or which may arise, between the Roman Catholic Church in Porto Rico and the people of Porto Rico, affecting property rights, whether real or personal or mixed, claimed by either party.

"SEC. 2. The Attorney General of Porto Rico shall be authorized to accept service for the people of Porto Rico of any citation, summons or other process issued by said court in said proceedings.

"SEC. 3. The Supreme Court, for the purpose of such trial and adjudication, shall have the right to issue process for witnesses and to receive and hear testimony, and the procedure in said court shall be the same, as near as may be, as that prescribed for the District Courts of Porto Rico in civil cases, and